

UNIVERSAL PERIODIC REVIEW OF JAMAICA

SUBMISSION BY STAKEHOLDER LGBTI, SEX WORKERS AND PLWHIV COALITION

FOR

THE UNIVERSAL PERIODIC REVIEW OF JAMAICA

UN HUMAN RIGHTS COUNCIL

NINTH SESSION (November 2010)

I. EXECUTIVE SUMMARY

This submission is made on behalf of seven (7) NGOs in Jamaica dedicated to the defence and monitoring of human rights for Jamaican Lesbians, Gays, Bisexuals, Transsexuals and Intersex (LGBTI), Sex Workers (SW) and People Living with HIV/AIDS (PLWHIV).

The purpose of this submission is to address the specific violations of the rights to non-discrimination, privacy, protection from cruel and inhumane treatment, work, health, education and housing. These violations are of interest to this coalition as they exacerbate the HIV/AIDS pandemic in Jamaica.

Jamaica has failed to ratify the full complement of international instruments that provide fundamental human rights protections to SW, LGBTI, and PLWHIV communities. It has also repeatedly failed to align its domestic legislation with human rights standards. Existing laws have also been utilized by agents of the state and private citizens to violate the rights of these persons to.

The Jamaican government must immediately repeal all laws which unreasonably discriminate against SW, LGBTI and PLWHIV and government officials must take a leadership role in creating the environment for Jamaicans, regardless of sexual orientation, gender identity, employment choice or HIV/AIDS status to fully exercise their fundamental human rights. Such action would accord with Jamaica's international obligations, under the Universal Declaration on Human Rights, the International Covenant on Economic Social and Cultural Rights, The International Covenant on Civil and Political Rights, The Convention on the Elimination of all

forms of Discrimination Against Women, the American Convention on Human Rights and OAS Resolutions 2435 and 2504 on Human Rights, Sexual Orientation and Gender Identity.

The coalition is composed of the following NGOs, who have signed on this report:

- **Jamaica Aids Support for Life (JASL)**
Founded in 1991 JASL is Jamaica's largest and oldest NGO working in the area of HIV/AIDS prevention, treatment and care.
- **Jamaica Forum for Lesbians, All-sexuals, and Gays**
Founded in 1998 J-FLAG's mission is to work towards a Jamaican society in which the Human Rights and Equality of Lesbians, All-sexuals, and Gays are guaranteed.
- **Caribbean Vulnerable Communities Coalition (CVC)**
Founded in 2004 CVC seeks to develop a cohesive and coordinated strategy to support work in the Caribbean with and on behalf of populations vulnerable to HIV and the stigma and discrimination associated with it.
- **Sex Workers Association of Jamaica (SWAJ)**
Founded in February 2007 SWAJ provides support services for Sex Workers and lobbies for the recognition of their right to work.
- **Women for Women (WfW)**
Founded in 1999, WfW seeks to bridge the gap between women in the Jamaican society and provide support especially for lesbian, bisexual and transsexual women.
- **The Underlined Response (UR)**
Founded in March 2010, UR seeks to address the limited access to services for LGBTI and questioning youth in Jamaica.
- **International Lesbian, Gay, Bisexual, Trans, and Intersex – Latin America and the Caribbean (ILGA-LAC)**
Founded in 1978, ILGA is a federation of organizations campaigning for Lesbian, gay, bisexual, trans and intersex rights and the Caribbean regional secretariat for gays in the Caribbean is located in Jamaica.

II. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. Jamaica is party to the following International conventions which recognize the human rights of Lesbians, Gays, Bisexuals, Transgendered and Inter-sex (LGBTI) persons, as well as Sex Workers (SW), Young Homosexuals (YH) and Persons Living with HIV (PLWHIV):

- 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,
- Convention on the Rights of the Child.

2. Jamaica has also signed but not yet ratified

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

3. In 1998 Jamaica withdrew from the Optional Protocol to the International Covenant on Civil and Political Rights.

4. In addition, within the context of the Organization of American States, Jamaica is a State party to the American Convention on Human Rights and supported the unanimous adoption of OAS resolutions 2435 and 2504 on 'Human Rights, Sexual Orientation and Gender Identity.

5. There have been calls for the Jamaican authorities to ratify as appropriate and to abide by the principles of the :

- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Code of Conduct for Law Enforcement Officials
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- International Covenant on Civil and Political Rights
- American Convention on Human Rights
- UN Convention on the Rights of the Child
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- UN Guidelines on the Role of Prosecutors
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- UN Declaration on Human Rights Defenders

6. The government of Jamaica has failed to ratify the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (Optional Protocol) (CEDAW) and the Convention of Belem do Para (The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women) - (Jamaica became a State Party to the Convention in December 2005)

B. Constitutional and legislative framework

7. The Jamaica Constitution was passed as an order in council in 1962. Fundamental rights are captured in Chapter 3 of the constitution. Of special significance is the fact that the Constitution does not prohibit discrimination on the grounds of gender and sexual orientation. Section 26 of the Jamaican Constitution prevents any laws which predated the country's independence from being reviewed by local courts. This is regardless of how draconian and violative of human rights these laws are. Therefore, the 19th century Offences Against the Person Act and the Town and Communities Act which directly contribute to violations of the rights of LGBTI and SWs are immune from review by local courts. The legal framework is based on the British Common Law.

C. Institutional and human rights structure

8. Although Jamaica has quite a few institutional and human rights structures, none specifically address the issues of LGBTI, SW. Very few focus on PLWHIV.

III PROMOTION AND PROTECTION OF HUMAN RIGHTS

Implementation of international human rights obligations

9. Equality and Non Discrimination

Sections 76, 77 and 79 of Jamaica's 18th Century Offences Against the Person Act (OAPA) criminalize anal sex, the private sex act of consenting adult males as well as any form of same-sex male intimacy termed 'gross indecency.' The laws can be easily engineered to target and prosecute homosexuals and, more generally, all non-reproductive sexual behaviour. The laws also strengthen social stigma against homosexuals. Section 79 is particularly troublesome because of its vague definition of gross indecency.

The criminalization of sodomy has the effect of amounting per se to discrimination against homosexuals' private sexual behavior for no good reason. Further, the proposed Charter of Rights and Freedoms which will amend the Jamaican Constitution makes no references to non-discrimination on the grounds of 'sexual orientation' and 'gender identity.' These laws strengthen social stigma against homosexuals.

10. Cruel and Inhuman Treatment

- i. Jamaica has been labeled as being the most dangerous place for gays in the Western Hemisphere. Jamaican security personnel as well as private citizens, acting under the provisions of s. 76, 77 and 79 of the OAPA regularly abuse, extort and harass Men who have Sex with Men (MSM) and Lesbians. Section 80 of the Offences Against the Person Act and section 4 of the Towns and

Communities Act, which grant broad latitude for arrest and detention without warrant or an order from a magistrate are also used to incarcerate MSM, Lesbians and SW.

- i. Examples of attacks on MSM are: April 2006 students rioted at the University of the West Indies in Jamaica and attacked an alleged gay student; February 14, 2007, a group of gay men, including gay-rights activist Gareth Williams, were stoned by a mob of over 2000 in Kingston. The police failed to arrest anyone for the attack and instead took the gay men into custody and subsequently abused them even as they sought to secure them from the mob; April 8, 2007, approximately 100 men attacked a church where 150 people were attending the funeral of a gay man in Mandeville. When called, the police made no arrests and instead are reported to have joined the mob in jeering the gay men; December 2009 a Jamaican police officer was held in lock-up for 12 days for alleged acts of gross indecency with another police officer. He was never charged and eventually released.
- ii. In 2008 four (4) cases of rape of lesbians and transgendered women ‘to set them straight’ were reported to WfW. The women refused to report the matter to the police for fear of further victimization by the police. In 2007 a 17 year old lesbian was held captive by her own mother and pastor for 18 days and raped repeatedly day after day by different religious men in the attempt to ‘make her take man’ and ‘live as god instructed.’
- iii. SWAJ reports that its members are regularly harassed, extorted and abused by police officers and private citizens acting under S.63 of the Offences Against the Person Act and its successor Section 23 of the Sexual Offences Act which criminalize adult consensual sex work. On November 20, 2006 a taxi driver used a machete to slash a sex worker after a disagreement over price. The sex worker did not go to the police or the hospital but visited the offices of JASL for treatment because of her fear of stigmatization and treatment by the police and hospital staff. In September 2008 a sex worker’s throat was slashed by a client and in 2009 a client succeeded in murdering a sex worker in Kingston. Despite the matters being reported to the police, there were no arrests.

11. Right to Privacy

Sections 76, 77 and 79 of Jamaica’s 19th century Offences Against the Person Act criminalize the private acts of consenting adult male same-sex intimacy . The police have used this provision in the past to harass males perceived to be gay and members of the public regularly invade the homes of alleged gay man. In January, 2008, three gay men were attacked in the privacy of their dwelling by an angry mob who had days before threatened them if they did not leave the community in Mandeville. Two men were

hospitalized, one with serious injuries. In February 2010 two homes of gay men were invaded by angry mobs in the parishes of Clarendon and St. Catherine. When called to the scene, the police failed to disburse the mob. In the Clarendon case the gay men were able to repel the attack while in the St. Catherine case the police took the gay men into custody while no members of the mob were arrested.

12. Right to work and free choice of employment

Section 63 of the OAPA and Section 23 of the Sexual Offences Act of 2009 criminalize sex work, regardless of whether this is freely entered into by consenting adults.

There is also no constitutional protection from employment discrimination on the grounds of sexual orientation and gender identity the result being that on May 20, 2008, the Jamaican Prime Minister Bruce Golding felt free to say in a BBC interview that no gays would form part of his cabinet.

13. Right to Health

Discrimination against and intolerance of MSM and Sex Workers spreads HIV/AIDS in Jamaica by driving these at risk individuals underground away from HIV/AIDS prevention treatment and care interventions. On March 12, 2010, the Executive Director of UNAIDS, Michel Sidibe, reminded the world that in Jamaica there is a 32 per cent HIV prevalence among men who have sex with men (MSM) versus 1.6 per cent in the general population. UNAIDS also reports that the HIV/AIDS prevalence rate among Jamaican Sex Workers is 9%. The distribution of condoms in prisons is banned because of the anti-sodomy laws with the result that incarcerated MSM engage in unprotected sex-acts which transmits HIV leading to a 3.6% HIV prevalence rate within the male prison population. Jamaican health officials acknowledge that Jamaica's sodomy laws make it difficult for them to work directly with men who have sex with men. In September 2009, Peter Figueroa, former chief, Epidemiology and AIDS, Ministry of Health said: "Bisexual men act as a bridge between the high rate of HIV in the gay community into the general heterosexual population through women... It would be good if we could repeal the sodomy law in Jamaica because that would send a signal to the gay community that they are part of the society."

14. Right to education

The UDHR provides that 'Education shall be directed to the full development of the human personality and to the strengthening of *respect for human rights* and fundamental freedoms. It shall promote understanding, *tolerance* and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.' Despite this, in November 2007 the Jamaican Minister of Education pulled two approved books from high schools (New Steps in Religious Education for the Caribbean Book 3 and C-SEC Home Economics and Beyond) because they mentioned same-sex unions and families. This

activity of the Minister reinforced the discrimination against LGBTI individuals and retards the development of a tolerant generation of Jamaicans. Perpetuation of violence against LGBTI by intolerant students is seen from the April 2006 student riot at the University of the West Indies, the premier university in the country, where an alleged gay student was attacked

15. Housing

Jamaican MSM, SW and young homosexuals are regularly evicted from their homes and left homeless. As a result of their participation in a Walk for Tolerance on April 7, 2010, 4 MSM were displaced from their communities because of threats to their lives. The Underlined Response reports that in February of 2010 it dealt with 6 cases of evicted LGBTI youth. JASL operated a shelter for such displaced individuals but was forced to close this due to lack of funding.

Home invasions of persons suspected of being gay are regular and in February 2010 there were two such cases with one group of gay men being held in police custody for two (2) days ‘for their safety.’

IV. Recommendations for the Jamaican Government

16. Ensure that all allegations of excessive force and other human rights abuses by law enforcement officials against HIV/AIDS workers, sexual minorities, sex workers, and people living with HIV/AIDS are investigated promptly and thoroughly by a body independent of those alleged to be responsible and which has the necessary powers and resources to fully investigate offences by state agents.

17. Cease and publicly repudiate all violence and harassment by police and other agents of the state against LGBTI, SW and PLWHIV.

18. Train all criminal justice officials in international human rights standards and nondiscrimination, including issues of sexuality, sexual orientation, and HIV/AIDS. Ensure that such training is fully integrated into training programmes provided to all ranks, and not treated as an additional class separated from the full curriculum of training. Ensure that police at all levels are trained on the fundamentals of HIV transmission and care for people living with HIV/AIDS and on the importance of the lifesaving efforts of HIV/AIDS outreach workers.

19. Repeal sections 76, 77 and 79 of the Offences Against the Person Act which criminalizes same-sex intimacy and are used as justification for harassment of men who have sex with men, women who have sex with women, and of HIV/AIDS educators working with them.

20. Repeal section 80 of the Offences Against the Person Act and section 4 of the Towns and Communities Act, which grant broad latitude for arrest and detention without warrant or an order from a magistrate, and replace them with clear, strict limitations on situations in which an arrest without warrant is permissible, such as when a crime is occurring or about to occur.

21. Repeal section 23 of the Sexual Offences Act which criminalizes consensual adult Sex Work.

22. Include 'sexual orientation and gender identity,' 'sex' and 'HIV/AIDS status' in the anti-discrimination clause of the Charter of Rights and Freedoms proposed as amendments to the Jamaican Constitution.

23. Government officials at all levels, including the Prime Minister should use public events and contacts with the media to condemn violence against HIV/AIDS workers; should affirm international standards relating to equality, including nondiscrimination based on sexual orientation, gender identity, and HIV status; and should reiterate the importance of human rights protections for all groups vulnerable to HIV/AIDS, including MSM and SWs. The Ministry of Health's stated position, articulated in national policy documents, on the importance of protecting marginalized groups against stigma and discrimination should be emphasized in public events and media.

24. Provide training on HIV/AIDS, sexuality and sexual orientation to all personnel in health care facilities, including instruction on the right to privacy and protection of confidential information about HIV status and specific guidance on how to guard against negligent and intentional disclosure. Ensure that appropriate and accessible legal remedies are available to individuals whose privacy has been infringed or who have experienced discrimination or harassment in the health system based on HIV status.