

APPEAL TO UN SPECIAL PROCEDURES
RE: Homophobic and transphobic violence in Jamaica

13th August, 2013

Mr. Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions (eye@ohchr.org)

Mr. Juan Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (sr-torture@ohchr.org)

Mr. Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (freedex@ohchr.org)

Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences (vaw@ohchr.org)

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Introduction: widespread practice of violence and discrimination against LGBT people in Jamaica

Jamaica's systemic homophobia has cost another child's life.

During the night and early morning of 21/22 July 2013, 16-year-old Dwayne Jones dressed in traditionally female attire and went to a popular street party in the parish of St. James. Dwayne was indentified by a female partygoer who recognized the teen and told some of the other patrons that Dwayne was male. A man accosted and searched Dwayne and discovered the teen's assigned gender. Dwayne was stabbed and shot and dumped in nearby bushes. Police discovered his body at 5 a.m. on the morning of July 22. The case is currently under police investigation. The attack was condemned by the Jamaican Minister of Justice, Senator Mark Golding, on 29 July 2013.¹

Research by the University of the West Indies indicates that anti-gay sentiment is above 80% among the Jamaican population.² And yet, the Government has done little to promote respect for the basic human rights of lesbian, gay, bisexual and transgender (LGBT) people. This intolerance for sexual diversity is often deadly.³

Since 2009, the Jamaica Forum for Lesbians All-Sexuals and Gays (J-FLAG) has recorded a near 400% increase in the number of reported homophobic or transphobic attacks against LGBT Jamaicans. These have included at least nine murders in 2012 alone, the circumstances of which indicate that the motive was the victims' sexual orientation or identity. In 2011, a 16 year-old gay boy, Oshane Gordon, was also murdered in St. James parish during a pre-dawn invasion of the

¹ Press Release: "Ministry of Justice's response to brutal killing of Dwayne Jones", *Jamaican Ministry of Justice*, July 29, 2013; "Justice Minister condemns killing of St James cross-dresser," *Jamaica Observer*, July 29, 2013, online: <http://www.jamaicaobserver.com/latestnews/Justice-Minister-condemns-killing-of-St-James-cross-dresser>.

² "National Survey of Attitudes and Perceptions of Jamaicans Towards Same-Sex Relationships: A Follow-Up Study," *AIDS-Free World*, 31 July 2012.

³ "Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic", Human Rights Watch, 16 November 2004, online: <http://www.hrw.org/reports/2004/11/15/hated-death>.

home he shared with his mother. Armed attackers used a machete to chop at Oshane's foot as he fled through an open window. When the men caught up with Oshane, they killed him through several more attacks with the machete. Jamaican broadcaster CVM TV reported that Oshane was killed because of "questionable relations" with someone of the same sex. These are just a few instances of an ongoing, longstanding pattern of horrific homophobic and transphobic violence identified by the Inter-American Commission on Human Rights in its 2012 Report on the Situation of Human Rights in Jamaica.⁴ With rare exceptions, the Jamaican authorities continue to deny that these homophobic and transphobic attacks are occurring.⁵

The prevalence of homophobic and transphobic violence in Jamaica has created a climate where many persons of diverse sexualities and individuals who do not conform to dominant gender norms are unable to fully express their identities without fear of attack. Beyond direct exposure to extreme, sometimes lethal violence, such a climate is fatal in other ways as well – including increasing the vulnerability of gay men and other men who have sex with men (MSM) in Jamaica to HIV, and impeding access to life-saving prevention and care. As the IACHR Report of 2012 highlights, there is a clear link between homophobia in Jamaica and the extremely high proportion of MSM with HIV.

Jamaica's obligations and commitments under international law

Numerous international human rights instruments applicable to Jamaica affirm:

- The right to life;⁶
- The right to be free from torture or cruel, inhuman or degrading treatment;⁷ and
- Freedom from discrimination, including in the enjoyment of all other human rights.⁸

In 2011, in its Concluding Observations on Jamaica's third periodic report under the ICCPR, the UN Human Rights Committee stated that:

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.⁹

Jamaica's obligations to protect individuals' right to life and safety against violent attacks includes an obligation to ensure that prompt, independent and effective investigations are undertaken in the case of any relevant allegations; and to ensure that, where appropriate, responsible individuals are prosecuted and appropriately sanctioned.

Given the high anti-LGBT sentiment in Jamaica, it is also relevant to recall Jamaica's obligations and commitments concerning non-discrimination against LGBT individuals. Earlier this year, the

⁴ "Report on the Situation of Human Rights in Jamaica," InterAmerican Commission of Human Rights, August 10, 2012, online: <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

⁵ Report of the Working Group: Universal Periodic Review of Jamaica (A/HRC/16/14), para. 31.

⁶ UDHR, Article 3; ICCPR, Article 6; CRC, Article 6.

⁷ UDHR, Article 5; ICCPR, Article 7; CRC, Article 37.

⁸ UDHR, Article 1; ICCPR, Articles 2 and 26; ICESCR, Article 2; CRC, Article 2.

⁹ CCPR/C/JAM/CO/3 (HRC, 2011), para. 8.

UN Committee on Economic, Social and Cultural Rights (CESCR) expressed concern, in its Concluding Observations regarding Jamaica's combined third and fourth periodic reports under the ICESCR, that consensual same-sex relations continue to be criminalized in Jamaica under the *Offences Against the Person Act*, thus perpetrating discrimination against homosexual, bisexual and transsexual persons in all spheres of life, including their enjoyment of economic, social and cultural rights (art. 2). CESCR thus recommended that Jamaica:

- (a) Decriminalize same-sex relations between consenting adults through necessary legislative amendments;
- (b) Take concrete, deliberate and targeted measures to eliminate discrimination on the grounds of sexual orientation; and
- (c) Send a clear public message that any form of discrimination, harassment or violence against individuals for their sexual orientation is not tolerated, and swiftly and effectively investigate, prosecute and sanction individuals for such acts.¹⁰

Yet despite the repeated documentation and reporting of egregious human rights abuses against LGBT persons, Jamaican authorities continue to deny their existence and, despite Jamaican legislation criminalizing consensual same sex conduct between adults, the government continues to deny the existence of discrimination in the law in the country. During its review under the Universal Periodic Review (UPR) mechanism of the UN Human Rights Council in November 2010, Jamaica stressed that:

...although consensual sex between adult males remained proscribed by law, there was no legal discrimination against persons on the grounds of their sexual orientation. Jamaica pointed out that Jamaican law did not criminalize lesbian, gay, bisexual and transgender orientation, nor did the Government condone discrimination or violence against lesbian, gay, bisexual and transgender persons. It added that there had been no credible cases of arbitrary detention and/or harassment of such persons by the police, nor was there any such official policy. Likewise, there was no evidence of any mob-related killing of lesbian, gay, bisexual or transgender persons.¹¹

Jamaica rejected numerous UPR recommendations to repeal laws criminalizing same-sex activities between consenting adults, as well as to investigate all incidents and acts of violence suspected of being motivated on the grounds of sexual identity, and take all necessary measures to ensure the full enjoyment of human rights by lesbian, gay, bisexual and transgender persons, as stipulated by the principle of non-discrimination established under international human rights law and articulated in the Yogyakarta Principles.¹²

More recently, prior to taking office in January 2012, Jamaican Prime Minister Portia Simpson-Miller spoke out against discrimination on the basis of sexual orientation and gender identity, and suggested a review of Jamaica's buggery laws.¹³ Since then, however, there has been no such initiative taken, and what persists is a climate of extreme homophobia and regular anti-LGBT violence, including murder.

Appeal to Special Procedures

¹⁰ E/C.12/JAM/CO/3-4 (CESCR, 2013), para. 9.

¹¹ A/HRC/16/14, para. 31.

¹² *ibid.* para. 101.

¹³ Human Rights Watch, Letter to PM P. Simpson-Miller, July 18, 2012, online: <http://www.hrw.org/news/2012/07/18/jamaica-combat-homophobia>.

The undersigned non-governmental organizations appeal to the Special Procedures mandate-holders to take the following actions:

1. Hold the Jamaican Government accountable for failing to take steps to address homophobia and to comply with its obligations under international law to promote and protect the human rights of all, regardless of sexual orientation or gender identity.
2. Issue a joint public statement calling on the Jamaican Government to openly condemn all homophobic and transphobic killings, and consider all other available means of intervention in addition to such a statement;
3. Call on the Government of Jamaica to ensure that prompt, independent and effective investigations are undertaken into all allegations of acts of violence, including those suspected of being motivated on the grounds of sexual orientation or gender identity.
4. Call on the Government of Jamaica to ensure that the investigations are able to result in the identification and prosecution of individuals responsible for such attacks and that any conviction leads to the imposition of appropriate sanctions.
5. Call on the Government of Jamaica to work with relevant civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people in Jamaica, regardless of sexual orientation or gender identity.
6. Call on the Government of Jamaica to repeal all legal provisions that might be used to criminalize consensual same sex relations between individuals above the legal age of consent.

Submitted by:

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