

## **BREAKING:**

### **AIDS-Free World and HIV Legal Network Release Delayed IACHR Report**

#### ***Inter-American Commission on Human Rights Censures Jamaica for Violating the Rights of LGBTI Citizens, Recommends Repeal of Homophobic Law Criminalizing Consensual Sex***

FOR IMMEDIATE RELEASE

February 17, 2021—In response to the first-ever petition filed in this matter, the Inter-American Commission on Human Rights (IACHR) has completed a scathing [report](#) declaring that Jamaica's *Offences Against the Person Act* violates several of the individual rights protected by the *American Convention on Human Rights*, which Jamaica ratified in 1978.

But the public release of the report has been held up for many months by the failure of the Jamaican government to provide a formal response to the IACHR's findings. The delay is intolerable at a time when the situation of LGBTI individuals continues to worsen in Jamaica.

As a consequence, AIDS-Free World and the HIV Legal Network—who have been partners in the legal challenge—are releasing the report in full.

The IACHR report lambasts Jamaica for criminalizing same-sex intercourse between males (punishable by up to 10 years in prison with hard labour) as well as “any act of gross indecency”—for example, a kiss—by a male with another male (punishable by two years in prison).

“The Jamaican government should take this report seriously, and act urgently to repeal the law, and save people's lives,” said Norman McKenzie, an activist who works with LGBTI youth in Jamaica. “The law breaches human rights to the highest degree. I work with youngsters, starting at age 15, who are forced from their homes by their own families and aren't protected by the police. They have a high risk of being murdered, of being raped. They are forced to sell sex on the street, putting themselves at great danger of contracting HIV. The problem is not getting better. It is getting worse.”

The law's impact upon Jamaican society is pernicious and widespread. Once described by *Time* magazine as the “most homophobic place on earth,” Jamaica continues to be marred by a virulent strain of anti-LGBTI bigotry. Physical and sexual violence are ever-present dangers for the country's LGBTI people. Many feel they have no choice but to avoid both general health services and specific services related to HIV and AIDS.

“This report is a resounding victory for social justice and a necessary repudiation of homophobia,” said Sarah Bosha, Legal and Research Advisor, HIV and Human Rights at AIDS-Free World. “The

IACHR's findings and recommendations can lead to fundamental changes in public policy throughout the Caribbean. Now it is up to Jamaica to repeal its harmful law."

During an IACHR hearing in November 2019, Boshia [testified](#) that the law "legitimizes and permits homophobic attitudes by health care workers."

The consequences of the law are predictable. The rate of HIV infection in Jamaica among men who have sex with men is 29.8%, the highest in the Caribbean region. The HIV prevalence among gay and bisexual adolescent boys is estimated to be 14%, and HIV prevalence in transgender adolescents is estimated to be 51%. Such numbers constitute an entirely avoidable public health crisis on the island.

"This report by the IACHR is vindication of what Jamaican LGBTI and HIV activists have been saying for decades: the colonial-era anti-sodomy law imposed by the British violates a raft of human rights obligations that modern Jamaica is bound to uphold," said Maurice Tomlinson, a prominent Jamaican human rights lawyer and consultant with the HIV Legal Network.

"It is time for the Government of Jamaica to act now and end this discriminatory and deadly statute, before even more LGBTI people fall victim to legally sanctioned stigma and violence."

The IACHR found that, along with violating Jamaicans' basic right to health, the *Offences Against the Person Act* violates the right to humane treatment; the right to privacy; the right to freedom of movement and residence; the right to equal protection; and the right to judicial protection.

The report concludes by issuing a number of recommendations. The IACHR asks Jamaica to repeal sections 76, 77, and 79 of the *Offences Against the Person Act* and "adopt the necessary measures to ensure the effective access to health services to LGBTI persons without discrimination."

Jamaica is under no legal obligation to follow the IACHR recommendations. Nonetheless, the IACHR report will carry tremendous weight in the international community and bring necessary pressure on Jamaican lawmakers to act. It also reinforces claims in an ongoing constitutional challenge to the law before Jamaica's courts that has been repeatedly delayed, including as a result of the Attorney General's conduct in the case.

The recommendations are hard won, the result of nearly a decade of determined work by advocates and brave petitioners. In August 2011, AIDS-Free World filed the first petition against the law before the IACHR on behalf of two LGBTI Jamaicans, whose names had to be withheld for fear of violent reprisal. The petition argued that the discriminatory sections of the *Offences Against the Person Act* violated several rights of petitioners "T.B." and "S.H" and created adverse conditions for the LGBTI population as a whole in Jamaica.

AIDS-Free World worked with Thompson Hine LLP, a private legal firm, which provided *pro bono* legal services over the course of the past nine years. The HIV Legal Network based in Toronto played a key role, offering legal support and forming part of the legal team that presented oral evidence on the merits of the petition before the IACHR.

T.B. and S.H told the IACHR that they had "suffered a series of restrictions to access health which derive from the context of discrimination against LGBTI persons in Jamaica and the validity of the *Offences Against the Person Act*," according to the report's summary.

In one example, T.B. described visiting a public health facility for an HIV test. “The nurse handed me a questionnaire to complete,” T.B. said in a 2011 declaration. “Among other things it had questions about my previous sexual partners. I was afraid to fill it out truthfully because I had only ever had sex with men, which is a crime in Jamaica. Completing the questionnaire would be admitting that I broke the law and could spend up to 10 years in prison. I also did not want to expose myself to further ridicule by admitting that I was gay. So, when the nurse was not looking, I quickly gathered my belongings and left.”

The IACHR report is a victory not only for the petitioners but for all LGBTI and HIV activists in Jamaica. Many are members of intrepid organizations—the Jamaica Forum for Lesbians, All-Sexuals, and Gays (J-FLAG), Jamaica AIDS Support for Life (JASL) and others—that continue to fight for equal rights and liberation despite enormous risks.

“It took nine years to get this report from the IACHR. But no matter how long it takes, AIDS-Free World is dedicated to achieving the goals of justice,” said Boshia. “We are proud to stand with the petitioners—and all LGBTI Jamaicans—as they heroically force Jamaica to reckon with its legacy of hate. May the future be free from the cruelties of the past.”

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