



The International Lesbian, Gay, Bisexual, Trans and Intersex Association

**JAMAICA
UPR SOGIESC RECOMMENDATIONS**

DATE AND TIME OF THE REVIEW: 13 MAY 2015, 09:00—12:30
DATE AND TIME OF THE ADOPTION OF THE REPORT: 15 MAY 2015, 15:30—18:00

During the 22nd UPR Working Group Sessions, Jamaica received 18 SOGIESC recommendations. It accepted 2 recommendations and noted 16 recommendations.

A. SOGIESC Information

National Report

63. The JCF's Diversity Policy, implemented in 25th August 2011, aims to eliminate all forms of discrimination and inequitable treatment toward members of the public, and guides members of the police force in their professional dealings with persons of particular groups, including lesbians, gays, bisexuals and transgender persons (LGBTs). The objectives of the Policy include:

- Fostering public confidence by demonstrating fairness, integrity, tolerance and understanding in dealing with all sections of the community;
- Demonstration of commitment, value and support to every individual by seeking to eliminate all forms of harassment and unfair bias;
- Providing the necessary support and referral to victims of crime and violence, regardless of the affiliation (individual or group) of the complainant;
- Elimination of fear of individuals from diverse groups of reporting crime and violence;
- Ensuring the provision of high quality, professional policing services to ALL members of the public.

64. There is also ongoing dialogue involving the Police and members of the LGBT community.

103. The Government is committed to the equal and fair treatment of its citizens and affirms that any individual whose rights are alleged to have been infringed has a right to seek redress. There is no legal discrimination against persons on the grounds of their sexual orientation. The Government of Jamaica is opposed to discrimination or violence against persons, whatever their sexual orientation.

104. In relation to discrimination on the basis of access to HIV/AIDS treatment, the Enabling Environment and Human Rights component of the National HIV/STI Programme seeks to strengthen the legislative, policy and advocacy environments of the national response through the development and/or amendment of laws and policies and supporting structures. The aim is to reduce the risk of HIV infections and to ensure that persons living with and affected by HIV can access treatment, care and support services without fear of stigma or discrimination. A Declaration of Commitment (signed on 29th April 2011 by the then Prime Minister, Honourable Bruce Golding and the then leader of the Opposition, the Most Honourable Portia Simpson Miller) gave impetus to the fight to eliminate stigma and discrimination and gender inequality affecting the HIV response in Jamaica.



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105. The revised behaviour change communication (BCC) strategy of the Government also provides the framework for prevention interventions which focus on providing a comprehensive prevention package for vulnerable populations, including men who have sex with men.

Compilation of UN Information

20. HR Committee regretted that the right to freedom from discrimination had failed to prohibit discrimination on grounds of sexual orientation and gender identity and recommended that Jamaica should amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity. It also recommended that Jamaica should decriminalize sexual relations between consenting adults of the same sex and put an end to prejudices and social stigmatization of homosexuality.⁴⁸ UNCT affirmed that criminalization of private, consensual same-sex sexual acts perpetuated homophobia and made HIV-prevention messaging difficult.

Summary of Stakeholder's Information

12. IACHR¹ reported that discrimination based on sexual orientation, gender identity, and gender expression was widespread throughout Jamaica, and that discrimination against LGBTI communities was entrenched in state institutions. It asserted that LGBTI communities faced political and legal stigmatization, police violence and inability to access the justice system. JS2² recommended that Jamaica implements 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. JS2 also recommended that Jamaica implements awareness- raising campaigns to promote the full inclusion of LGBT people in society.

13. AI³ stated that LGBTI organizations reported attacks, harassment and threats against individuals based on their real or perceived sexual orientation. ISHR⁴ recommended that Jamaica legalise the defence of the rights of the LGBTI population and criminalise discrimination on the basis of sexual orientation and gender identity. JS2 recommended that Jamaica enact anti-hate crime legislation, establish anti-discrimination measures through specifically assigned and mandated offices, and provide for speedy and effective criminal, administrative and civil remedies.

14. CHRI⁵ expressed disappointment that the Jamaican Government's new Human Rights Charter failed to incorporate the right to non-discrimination on grounds of sexual orientation and gender identity and JFLAG⁶ asserted that this Charter did not offer protection on the basis of one's sexual orientation or gender identity. AI recommended the Charter's amendment, to prevent discrimination on the basis of one's sexual orientation, gender identity, gender expression, or any other relevant trepidation.

¹ Inter-American Commission on Human Rights – Organization of American States, Washington (United States of America).

² Joint Submission 2 submitted by: J-FLAG, Kingston (Jamaica); and Sexual Rights Initiative (SRI).

³ Amnesty International, London (United Kingdom of Great Britain and Northern Ireland).

⁴ International Service for Human Rights, Geneva (Switzerland).

⁵ Commonwealth Human Rights Initiative, New Delhi (India).

⁶ J-FLAG, Kingston (Jamaica).



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15. JFLAG noted that during the UPR in January 2011, Jamaica received several recommendations regarding the need to repeal or make amendments to all provisions of the law that criminalize same-sex activities between consenting adults and that these recommendations did not enjoy support from Jamaica. CHRI stated that retaining provisions that criminalise consensual same-sex relationships was incompatible with Jamaica's human rights obligations, entrenched homophobia and reinforced stigma and prejudice based on sexual orientation. AI affirmed that these laws breached the right to privacy and JS2 recommended that Jamaica decriminalizes these activities. In October 2014, AI reported that in 2013 the Government announced that a "conscience vote" by MPs on legislation criminalizing consensual same sex relations would be held before April 2014 but that the vote, however, had not taken place.

37. ISHR stated that human rights defenders often did not have the protection of the Jamaican Police Federation as they were labelled 'agents of provocation' who falsely accuse the police and the state. ISHR reported that Jamaica rejected one recommendation concerning human rights defenders (HRDs) in its first UPR. It asserted that defenders of the rights of LGBTI people have been murdered, beaten and threatened and that impunity for these crimes remains common, as they are often perceived as transgressors of social and cultural values.

39. IACHR stated that justice in Jamaica was administered with one standard for the rich and another for the poor and asserted that there was a link between the denial of justice, poverty and discrimination. IACHR was troubled by severe delays in the criminal justice and stated that access to remedy was neither simple nor prompt. JS2 recommended that Jamaica amends its legal system to guarantee every citizen, and particularly LGBT people, access to justice, inter alia, by strengthening judicial capacity and infrastructure. IACHR expressed it was troubled by the lack of state-provided legal assistance and legal aid.

48. IACHR asserted that because of risk of police abuse, lack of accountability, and subsequent community threat after exposure, LGBTI individuals were afraid to report incidents of violence and discrimination to the police and were denied access to justice. JFLAG urged Jamaica to implement mechanisms to improve access to justice for LGBT citizens.

58. IACHR was deeply concerned that violence and discrimination against the LGBTI community was a substantial factor contributing to the HIV/AIDS epidemic in Jamaica and stated that HIV infected individuals were reportedly denied equal access to healthcare due to discrimination based on their medical status. IACHR was further concerned that laws criminalizing sex between men or homosexual conduct had a direct effect on infection rates.

59. JS2 outlined the initiatives taken by the Ministry of Health through the National HIV Programme and National Family Planning Board (NFPB), to build the capacity of public health workers and promote the right to health. JS2 recommended that Jamaica, inter alia, develops nation-wide health policies to attend the needs and requirements of LGBT people and provides HIV, sexual and reproductive health services to LGBT people with the same range of quality and accessibility as the rest of the population.

B. SOGIESC Advanced Questions for Jamaica

- **Germany:** What measures have been undertaken to raise awareness on discrimination based on sexual orientation and gender identity and more concretely which steps have been undertaken to ensure the protection of LGBTIQ persons?
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- **Norway:** What concrete steps does Jamaica intend to take to reduce discrimination, towards people based on health status, sexual orientation or gender identity, or other stigmatized categories, and what legal recourse will be made available for victims of discrimination?
- **Norway:** Does Jamaica have a clear definition of “hate crime”? If so, does this include sexual orientation and gender identity, as well as other possible motives of hate crimes such as religion, gender, race, disability or ethnicity? What steps is Jamaica taking to monitor and document incidents of hate crime against LGBT people, to ensure accurate reporting and collation of information, and identify patterns of crime?
- **Slovenia:** Is Jamaica considering amending the laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity? What concrete steps does the state intend to take to address homophobic discrimination with the use of awareness-raising and human rights education?
- **Sweden:** What measures has the Government taken to improve the safety of LGBT persons and to reduce the number of alleged hate crimes against them?
- **United Kingdom:** When will the Government of Jamaica enact comprehensive anti-discrimination legislation which will specifically prohibit discrimination on the grounds of sexual orientation, disability and other globally recognized categories that are not currently protected under Jamaica’s Charter of Fundamental Rights and Freedoms?

C. Jamaica’s Working Group Session

- **Opening Remarks:** The Constitution of Jamaica guarantees basic human rights to all Jamaicans. There is no discrimination based on gender or sexual orientation. No law criminalizes orientation. No credible case of arbitrary detention or harassment of persons on the basis of sexual orientation has been presented. In order to create greater understanding of the concerns of the LGBTIQ community, several initiatives are already in place to address these concerns. The Jamaica Constabulary Force has already established a clear policy of engagement with the LGBTI community including human rights training and sensitisation.

The National Strategic Action Plan to Eliminate Gender-Based Violence to address gender-based violence in all its forms is also expected to contribute to protecting and improving the safety of lesbian, gay, bisexual and transgender persons. The NSAP-GBV consultations with key stakeholders included members of J-FLAG the foremost organization in Jamaica advocating for the rights of lesbian, gay, bisexual and transgender (LGBT) people.

- **Intervention Made by Jamaica after 50 Interventions:** J-FLAG, which is the main anti-discrimination and lobby group for the LGTB community, and our Ministry of Health do collaborate in relation to HIV/AIDs issues, including training sessions for health care workers and police personnel to reduce the incidence or attitude of discrimination against HIV patients.

D. Recommendations for Cycle II (2015)

a) Remarks of States

- **Brazil:** Nevertheless, we believe that more attention should be given to the realisation of the rights of women and children, LGBTI individuals and people living with HIV and AIDs.
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- **France:** France, however, deplors the persistence of discrimination and violence against LGBTI people.
 - **Germany:** Germany remains deeply concerned about Jamaica's human rights situation, in particular continued violence against women and LGBTI people as well as a lack of investigations of allegations of extrajudicial killings.
 - **Montenegro:** In that regard, we would like to ask the delegation to elaborate on activities taken to strengthen efforts to further improve the legislation framework and implementation of relevant policies and programs in the field of gender equality and fight against homophobia and discrimination based on sexual orientation and gender identity.
 - **Netherlands:** We make the first recommendation because we remain concerned about the violence against LGBTI persons. It is reported that LGBTI persons face political and legal stigmatization, police violence and inability to access the justice system.
 - **Norway:** Norway is concerned about the criminalization of same-sex activities between consenting adults in Jamaican legislation.
 - **Spain:** Spain recognises the efforts made by Jamaica in relation to the struggle against the discrimination of the LGTBI collective through awareness campaigns.
 - **Sweden:** Same-sex intimacy among males is illegal and punishable by up to ten years, in prison, though homosexuality per se is not punishable. According to reports, hostility, violence and other types of abuse are perpetrated against Jamaicans who are either lesbian, gay, bisexual or transgender is widespread. Despite the fact that more people who are LGBT are reporting acts of violence and discrimination to the police, many incidents go unreported.
 - **United Kingdom:** We remain concerned that the establishment of the Charter did not include non-discrimination on the grounds of sexual orientation and gender identity.
 - **United States:** We are also concerned by laws prohibiting consensual same-sex sexual conduct between adults, as well as violence and discrimination faced by members of the LGBT community.
- b) The following recommendations have been examined by Jamaica and enjoy the support and are considered already implemented or in the process of implementation by Jamaica:**
- **Canada:** Take effective measures to investigate and prosecute all incidents and acts of violence targeting individuals based on sexual orientation (120.20)
 - **Netherlands:** Step up its efforts to protect all citizens from violence and discrimination, including lesbian, gay, bisexual and transgender persons (120.21).
- c) The following recommendations have been examined by Jamaica and have been noted by Jamaica**
- **Argentina:** In line with the Human Rights Committee, decriminalize consensual same-sex sexual relations between adults and put an end to prejudices and social stigmatization of homosexuality (122.30).
 - **Brazil:** Prohibit discrimination on the basis of sex, sexual orientation and gender identity. Such measures would be of great importance to the fight against homophobia as well as for the progress in combating HIV/AIDS in the country (122.35).
 - **Chile:** Legally prohibit discrimination on the grounds of sex, sexual orientation and gender identity and punish acts of violence that affect lesbian, gay, bisexual, transsexual and intersex persons (122.31).
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- **Germany:** Implement measures to recognize and protect human rights defenders, including those defending the rights of the lesbian, gay, bisexual, transsexual and intersex population (122.20).
- **Germany:** Decriminalize sexual relations between consenting adults of the same sex and put an end to prejudices and social stigmatization of homosexuality (122.33).
- **Italy:** Strengthen the legal framework to combat discrimination on the basis of sexual orientation (122.34).
- **Montenegro:** Amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity (122.36).
- **Norway:** Amend the Charter of Fundamental Rights and Freedoms to include sexual orientation and gender identity and expression as a protected category (122.37).
- **Slovenia:** Decriminalize sexual activity between consenting adults of the same sex, and address hate crimes on the grounds of sexual orientation and gender identity, as matter of urgency, as previously recommended (122.38).
- **Slovenia:** Repeal laws that criminalize sexual activity between consenting adults of the same sex (122.39).
- **Slovenia:** Take measures to eliminate the discrimination and stigmatization against lesbian, gay, bisexual, transsexual and intersex persons (122.40).
- **Spain:** Adopt effective measures to eradicate violence against the lesbian, gay, bisexual, transsexual and intersex group, as well as the inclusion within the Charter of Rights adopted in 2011 of a provision for no discrimination on grounds of sexual orientation (122.41).
- **Sweden:** Repeal the legal provisions making same-sex intimacy among men – described as "gross indecency and buggery" – illegal (122.27).
- **United Kingdom:** Introduction and implementation of fully comprehensive anti-discrimination legislation to include sexual orientation and gender (122.28).
- **United States:** Decriminalize consensual same-sex sexual conduct between adults (122.32).
- **Uruguay:** Take measures to reduce violence against lesbian, gay, bisexual, transsexual and intersex persons, with a view to reducing homophobic prejudices of the Jamaican society and facilitate their access to all services (122.29).

E. Recommendations for Cycle I (2010)

a) Accepted Recommendations

- **Slovenia:** Provide all enforcement officials with proper sensitivity training in relation to sexual orientation, gender identity and HIV-AIDS.

b) Noted Recommendations

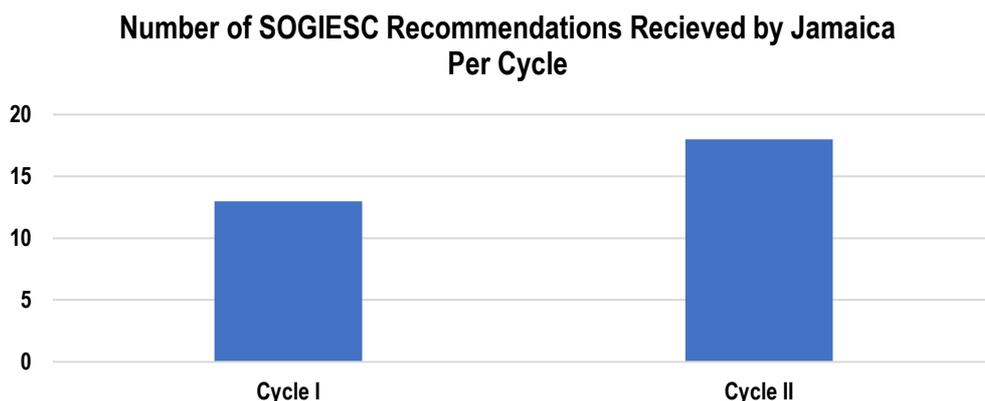
- **Australia:** Remove legislation which discriminates against individuals on the basis of their sexual orientation or gender identity.
 - **Belgium:** Initiate or join public campaigns so as to encourage tolerance towards homosexual, bisexual and transsexual persons.
 - **Belgium:** Decriminalize consensual sexual relations between adults of the same sex, and abolish all legal provisions discriminating against homosexual, bisexual or transsexual persons.
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- **Canada:** Reinforce legal protections against discrimination to include sexual orientation and gender identity as prohibited grounds for discrimination.
- **France:** Repeal all legal provisions constituting discrimination against lesbian, gay, bisexual and transgender persons.
- **Netherlands:** Start a public information campaign to combat discrimination based on sexual orientation.
- **Netherlands:** Repeal all provisions that criminalize same-sex activities between consenting adults.
- **Slovenia:** Decriminalize sexual activity between consenting adults of the same sex, and address hate crimes on the grounds of sexual orientation and gender identity, as a matter of urgency.
- **Spain:** Include in the Charter of Rights Bill, currently before Parliament, a specific prohibition of discrimination on the grounds of sexual orientation and repeal all legal provisions criminalizing consensual relations between adults of the same sex and combat this type of discrimination through awareness-raising campaigns and education programmes in school.
- **Sweden:** Decriminalize consensual same-sex relations between males, 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.
- **United States:** Repeal sections 76, 77 and 79 of the Offences against the Person Act, which criminalize same-sex male intercourse.
- **United States:** Ensure the protection of defenders of the rights of lesbian, gay, bisexual and transgender persons, and take measures to ensure that lesbian, gay, bisexual and transgender persons can fully and freely exercise their rights without fear of attack or reprisal.

F. Graphic Comparison Between Cycles



G. [Video of Jamaica's UPR Working Group Session](#)

H. SOGIESC Mentions During Jamaica's UPR Outcome (Item 6 of the Agenda of the Human Rights Council)



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- **Jamaica:** Jamaica has accepted the majority of recommendations or parts thereof, which encourage the Government to combat or to continue to combat discrimination on any grounds and in all spheres of life, and to act in furtherance of the protection of the rights of vulnerable persons in the society, including women, children and the disabled. The LGBTI community is naturally included as part of this thrust. Jamaica has an agglomeration of legislation, policies, strategies and measures in place at various levels which derive from the Constitution and which, collectively, form an effective machinery that provides all Jamaicans redress from discrimination of any kind; we are, therefore, not in agreement with those recommendations that suggest, in whole or in part, that the only way to effectively fight discrimination is through a single anti-discrimination law.

Jamaica continues to take steps to end prejudice and stigmatisation affecting all Jamaicans, including LGBTI persons, emphasising mutual respect among all Jamaicans, adherence to the rule of law and continuing in a strong historical tradition of freedom of expression and opinion, however divergent or bluntly expressed. We do not accept any recommendation which seeks to typify the attitudes of Jamaican society generally as “homophobic”. The Government of Jamaica has consistently condemned all acts of violence, against all persons. As part of its approach to the decades-old problem of violence that has spared no community, or group of persons; the Government has been a leading voice in the Caribbean region, advocating for a regional, hemispheric and global response to the epidemic of violent behaviour that has affected Jamaica and other countries in the Americas.

- **ILGA:** ILGA, in consultation with J-FLAG, shared its concern with regards to noted recommendations on LGBT issues. It called on Jamaica to conduct a legal audit to measure the impact of certain laws on the LGBT community and to ensure access to social services for LGBT persons.
 - **Amnesty International:** Amnesty International raised concern over the lack of a general framework against discrimination which includes sexual orientation and gender identity. It also drew attention to impunity for violence against LGBT persons. It expressed great regret over the reluctance of Jamaica to accept recommendations to decriminalise consensual same-sex sexual activities.
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