

Portia Simpson-Miller
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10

RE: Expressing our concern regarding recent violent attacks on the Jamaican LGBT community and Jamaica's maintenance of its anti-buggery laws

November 8, 2013

The Most Honourable Prime Minister Simpson-Miller,

We, the undersigned, are writing to express our concern over acts of violence perpetrated in recent months against lesbian, gay, bisexual and transgender (“LGBT”) Jamaicans. We urge your administration to take all necessary measures to protect the LGBT community. In particular, the government should amend sections 76, 77, and 79 of the Offences Against the Person Act to decriminalize consensual same-sex relations between adults, and to amend section 3 of the Sexual Offences Act¹ to reflect a gender-neutral definition of rape.²

The violent acts against the LGBT community in Jamaica are both alarming and unacceptable. Some of these acts of violence include the mobbing, stabbing, and in extreme cases, killing of members of the LGBT community. For example, on July 22, 2013, a transgendered teen, Dwayne Jones, was beaten, stabbed, shot, and run over by a car when it was discovered at a party that he was biologically male but dressed as a woman.³ Dwayne Jones attempted to flee the scene once his status was revealed, but he could not outrun the mob that had formed.⁴

The tragic deaths of LGBT individuals are only some of the atrocious acts that are being carried out against this community in Jamaica. Other events include the mobbing and harassment of

¹ Jamaican Offences Against the Person Act of 1864, ss. 76, 77, and 79, http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf

² Jamaican Sexual Offences Act of 2011, <http://moj.gov.jm/sites/default/files/laws/Sexual%20Offences%20Act.pdf>.

³ McFadden, David, *Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report*, Huffington Post (Aug. 11 2013, 3:47 PM), http://www.huffingtonpost.com/2013/08/11/jamaica-transgender-murder-_n_3739448.html [accessed September 27, 2013].

⁴ *Id.*

homosexual members of the community.⁵ For example, it is alleged that on September 20, 2013, an angry mob of men shouted hateful obscenities and mobbed a 22-year old who was simply walking home.⁶ The victim ran for his life as he felt stones slamming into his back, one of which left a scar. He thankfully escaped through a gully onto a field, but he feared the police would mock and further victimize him if he reported the incident. When he gathered the strength to report it, the officers ridiculed him and failed to conduct an investigation of the incident.

More recently, on October 8, 2013, an angry mob of 14 men fire-bombed four homosexual men still living at the last known home of Dwayne Jones.⁷ An officer at the St. James Public Health Department, who received a call from one of the victims after the incident, requested that the Mt. Salem police take the men in for safe-keeping, but the request was denied.⁸ According to the officer, “they could not take them in because they would not be safe there.”⁹ This inadequate police response to LGBT violence is particularly of concern in the context of LGBT homelessness. For example, reports suggest that on October 12, 2013, Jamaican police in New Kingston burned the belongings of LGBT living in a gully as part of a “crackdown” against homeless “unruly gay men.”¹⁰

This violence is due in part to the anti-buggery laws that criminalize private acts of same-sex intimacy between consenting adults. These laws both promote and reflect the discrimination against LGBT that persists in Jamaica’s society. The colonial-era anti-buggery laws promote vigilante justice and provide members of the community with a justification for this behavior.¹¹ They also lead to the public perception that gay individuals are “un-apprehended criminals,”¹² and therefore that acts of violence against them are morally and legally justified. Additionally, sexual orientation and gender identity are not listed in the Charter of Fundamental Rights and

⁵ Nichols, James, *Jamaica mob traps and barricades 5 gay men in house*, Huffington Post (Aug. 26, 2013, 4:21 PM), http://www.huffingtonpost.com/2013/08/26/jamaica-mob-traps-gay-men_n_3818590.html [accessed September 27, 2013], and Duncan, Newton, *To kill a cross-dresser - Jamaica flirts with Jim Crow*, The Gleaner (September 1, 2013), <http://jamaica-gleaner.com/gleaner/20130901/focus/focus4.html> [accessed September 27, 2013].

⁶ Tomlinson, Maurice, *Gay Jamaican Mobbed-Another One*, Dadland Shut Up, (September 22, 2013), <http://dadlandshutup.com/gay-jamaican-mobbed-another-one/#comments> [accessed October 4, 2013].

⁷ Frater, Adrian, *House occupied by gays firebombed*, Jamaica Gleaner, (October 10, 2013), <http://jamaica-gleaner.com/gleaner/20131010/lead/lead6.html> [accessed on October 11, 2013].

⁸ *Id.*

⁹ Everald Morgan, Officer, St. James Public Health Department, Jamaica Gleaner, (October 10, 2013).

¹⁰ Jamaican LGBT News, *Police Raid Homeless Gay Men*, YouTube (Oct. 18, 2013), <http://www.youtube.com/watch?v=4d2ICYwg5K0>

¹¹ *The Abominable Crime*, Micah Fink, The Pulitzer Center on Crisis Reporting, 2013.

¹² *Id.*

Freedoms as protected categories against discrimination.¹³ This absence not only leaves LGBT without constitutional protection and judicial recourse, it also strengthens the general public's perception that the Jamaican government sanctions discrimination against LGBT.

These laws also violate Jamaica's international human rights obligations. Under the American Convention on Human Rights and the International Covenant on Civil and Political Rights, both of which Jamaica has ratified,¹⁴ Jamaica has a duty to respect, protect, and guarantee the human rights of everyone within its jurisdiction. Specifically, Jamaica has a duty to prevent attacks against the Jamaican LGBT community, investigate human rights violations, and hold responsible those who committed the violations.

Under Article 1(1) of the American Convention, Jamaica has an obligation to respect the rights and freedoms of individuals without any discrimination. According to a recent decision from the Inter-American Court on Human Rights, in the case of *Atala Riffo v. Chile*, the Court established that states parties to the American Convention cannot discriminate on the basis of sexual orientation.¹⁵ Additionally, under Article 2 of the American Convention, Jamaica has an obligation to repeal discriminatory laws such as the anti-buggery laws.¹⁶ Jamaica is also violating its obligation to respect the right to life, the right to private life, the right to freedom of association, and the right to equal protection before the law under Articles 4, 11, 16, and 24 of the American Convention. Jamaica's anti-buggery laws also contradict the UN Human Rights Committee decision in *Toonen v. Australia*, which held that states parties to the ICCPR cannot discriminate on the basis of sexual orientation and gender identity.¹⁷

Such discrimination is also of grave concern as it fuels the spread of HIV/AIDS in Jamaica. The anti-buggery laws limit access to healthcare by perpetuating the stigma surrounding gay

¹³ See Article 13(3)(i) of Jamaica's Charter of Fundamental Rights and Freedoms of 2011, [http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20\(Constitutional%20Amendment\)%20Act,%202011.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20(Constitutional%20Amendment)%20Act,%202011.pdf)

¹⁴ International Covenant on Civil and Political Rights, Dec. 16 1966, 999 U.N.T.S. 171, *ratified by Jamaica on Oct. 3, 1975*, and Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, *ratified by Jamaica on July 19, 1978*.

¹⁵ *Case of Atala Riffo and Daughters v. Chile*, Series C No. 239, Inter-American Court of Human Rights (IACrHR), February 24, 2012, para. 91, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf [accessed 26 September 2013], and *Case of Dacosta-Cadogan v. Barbados*, Series C No. 204, Inter-American Court of Human Rights (IACrHR), 24 September 2009, paras. 64-75, available at: <http://www.refworld.org/docid/4b9913512.html> [accessed 27 September 2013].

¹⁶ *Case of Boyce v. Barbados*, Series C, No. 169, Inter-American Court of Human Rights (IACrHR), 20 November, 2007, para. 78, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_169_ing.pdf [accessed on 27 September 2013].

¹⁷ United Nations, Human Rights Committee, *Toonen v. Australia*, Communication, April 4, 1992, 488/1992, CCPR/C/50/D/488/1992, para. 8.3.

individuals and making them fearful of revealing their identity by seeking care.¹⁸ The Jamaican Ministry of Health has recognized that the fear, stigma, and discrimination caused by the anti-buggery laws hampers its ability to combat HIV/AIDS.¹⁹

For these reasons, we, the undersigned, urge Jamaica to adopt all appropriate measures to prevent, investigate, and sanction violence and discrimination against LGBT individuals. We urge the you as the Prime Minister to fulfill your campaign promise to call a parliamentary conscience vote on a possible repeal or amendment of the anti-buggery laws, and to take action to increase respect for and ensure that LGBT persons can effectively enjoy “their right to a life free from discrimination and violence.”²⁰

Sincerely,

Organizational Signatories:

AIDS-Free World

Caribbean Institute for Human Rights

Center for Gender & Refugee Studies

Center for Justice & Accountability

Interamerican University of Puerto Rico, International Human Rights Clinic

Leitner Center for International Law and Justice at Fordham Law School

Miami Law Human Rights Clinic

National Lawyers Guild

Santa Clara University, International Human Rights Clinic

Society of American Law Teachers (SALT)

¹⁸ UNAIDS: Joint United Nations Programme on HIV AIDS, *The Status of HIV in the Caribbean*, 2010, p. V.

¹⁹ The Jamaican Ministry of Health, *National HIV Programme, Jamaica: Country Progress Report*, submitted to the Secretary General of the UN on 31 January 2008, pp. 11-26.

²⁰ Organization of American States, *Inter-American Commission on Human Rights*, Press Release, IACHR expresses concern about violence and discrimination against LGBT persons, particularly youth, in the Americas. August 15, 2013, available at: http://oas.org/en/iachr/media_center/PReleases/2013/060.asp [accessed September 27, 2013].

The Queer Empowerment Project

University of Washington School of Law Center for Human Rights and Justice

Weill Cornell Center for Human Rights at Weill Cornell Medical College in New York

Western New England University School of Law, International Human Rights Clinic

Women's Global Network for Reproductive Rights (WGNRR)

Individual Signatories (Institutional affiliations provided for identification purposes only):

Almudena Bernabeu, *Director, Transitional Justice Program, Center for Justice and Accountability*

Blaine Bookey, *Associate Director/Staff Attorney, Center for Gender & Refugee Studies*

Brian Citro, *Clinical Lecturer in Law, Fellow, International Human Rights Clinic, University of Chicago Law School*

Professor Cesare P.R. Romano, *Director, International Human Rights Clinic, Loyola Law School*

Christine L. Lin, *Clinical Instructor / Staff Attorney, Refugee & Human Rights Clinic, Hastings College of Law*

Desiree Rivera, *Ph.D.*

Earl Brown, *Counsel, AFL-CIO Solidarity Center, Washington DC*

Joshua Cooper, *Four Freedoms Forum*

Katie Thomas, *Vermont Law School*

Laurel E. Fletcher, *Clinical Professor of Law, University of California, Berkeley, School of Law*

Lauren Carasik, *Clinical Professor of Law, International Human Rights Law Clinic, American University, Washington College of Law*

Martin S. Flaherty, *Founding Co-Director, Leitner Center for International Law and Justice*

Paula R. Rhodes, *Esq., Associate Professor, Sturm College of Law, University of Denver*

Phillip D. Althouse, *Attorney, Member of National Lawyers Guild Task Force on the Americas*

Professor Brook K. Baker, *Northeastern U. School of Law, Program on Human Rights and the Global Economy*

Sandra Babcock, *Clinical Professor, Center for International Human Rights, Northwestern University School of Law*

Shana Tabak, *Practitioner in Residence, International Human Rights Law Clinic, American University, Washington College of Law*

Shikha Silliman Bhattacharjee, *Fellow in the Asia Division at Human Rights Watch*

Stephen A. Rosenbaum, *Visiting Senior Lecturer, University of Washington School of Law, John & Elizabeth Boalt Lecturer, University of California, Berkeley School of Law*

Timothy Lunceford

Toni Holness

Veronica Brin Yusprakh Aragon, *Deputy Director, International Human Rights Clinic, Loyola Law School*

cc: Hon. Mark J. Golding, Minister of Justice

Hon. Arnold Nicholson, Minister of Foreign Affairs and Foreign Trade

Emilio Alvarez Icaza Longoria, Executive Secretary of the Inter-American Commission on Human Rights