

**ISHR**INTERNATIONAL SERVICE
FOR HUMAN RIGHTS

THE SITUATION OF HUMAN RIGHTS DEFENDERS

JAMAICA

UPR Briefing Paper - September 2014

Jamaica underwent its first Universal Periodic Review (UPR) in November 2010. While there were no recommendations made regarding freedom of expression or assembly, Jamaica rejected the one recommendation concerning human rights defenders (HRDs), emphasising the view that HRDs who defend the rights of the LGBTI community do not require special protections under the law.¹

Jamaica neglected to make their position clear regarding five recommendations that call for the State to establish an independent national human rights institution (NHRI) in conformity with the Paris Principles.² Additionally, Jamaica rejected the two recommendations regarding access to the Special Procedures, signalling an attempt to limit HRD access to international protection mechanisms.³ On the ground, the situation remains dire four years on. HRDs are still exposed to the danger of being killed or beaten, as well as being threatened.

RISKS FACING HUMAN RIGHTS DEFENDERS

- HRDs in Jamaica have seen very little in the way of concrete steps to ensure their protection. In its 2013 Annual Report, Amnesty International reported an increase in attacks, harassment and threats against human rights defenders working to protect the rights of the LGBTI community. Amnesty further noted that such attacks are not fully and promptly investigated, leading to impunity.⁴
- Jamaicans for Justice has reported that 'violent incidents against defenders of the LGBTI community have been on a steady rise over the past several years'.⁵ In 2009 the prominent gay rights organisation Jamaica Forum for Lesbians, All-sexuals, and Gays (J-FLAG) recorded 27 incidents of homophobic discrimination and violence. In 2012, that number had increased to 68, including two killings.⁶
- HRDs such as leading gay activist Brian Williamson have been murdered for their work on LGBTI rights.⁷ Others have had to use pseudonyms, withhold information from their families, or leave the country for fear of reprisals.⁸

- The work of HRDs working on gay rights is often shunned by the public, where homophobia is rife and LGBTI rights defence is often seen as 'illegal, illegitimate, unscrupulous or even immoral'.⁹

OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

- Section 76 of the Offences against the Person Act punishes the 'abominable crime of buggery' with up to ten years' imprisonment with hard labour.¹⁰ While authorities note that section 76 of the Act is seldom enforced, sporadic arrests citing this law ensures a constant state of fear. The Jamaican press publishes the names of men charged with buggery, shaming them and putting them at risk of physical injury.¹¹
- The Inter-American Commission on Human Rights (IACHR) highlighted that Jamaica has 'no law which prevents discrimination against an individual on the basis of his or her sexual orientation, gender identity, or gender expression. There is no legislation addressing hate crimes in Jamaica'.¹²
- The IACHR also noted in 2011 that Jamaican law prohibits the establishment of human rights organisations whose purpose is to defend the rights

of LGBTI persons, on the ground that such an organisation is 'unlawful'.¹³

- Taking a bold step in 2013, the Jamaican Parliament passed a bill to abolish criminal defamation¹⁴ which complements the freedom of expression enshrined in the country's constitution. To date, however, journalists have to exercise self-censorship as a result of threats from the State to file civil defamation cases which result in excessive damages.¹⁵
- Intimidation and reprisals against defenders accessing international human rights mechanisms
- On 29 August 2012, Clover Graham, the UN High Commissioner for Refugees' liaison for Jamaica, was killed. Both the UNHCR and IACHR have called for a thorough and impartial investigation into her murder.
- There is little additional information available on this issue. However it is possible that the risks of reprisal outlined in this paper dissuade other HRDs from engaging in international mechanisms.

HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

- Human Rights Watch has issued several warnings to defenders operating in Jamaica, noting that levels of homophobia mean that HRDs advocating the rights of LGBTI people are not safe in the country.¹⁶
- Defenders of the rights of LGBTI people have been murdered, beaten and threatened, and the police have been criticised for failing in many instances to prevent or respond to reports of such violence.¹⁷
- HRDs often do not have the protection of the Jamaican Police Federation as they are labelled 'agents of provocation' who falsely accuse the police and the state.¹⁸
- IACHR notes that defenders of the LGBTI community cannot exercise their freedom of association to protect their own rights, since the very purpose of these organisations relates to practices that are deemed illicit.

- Impunity for crimes against defenders of the LGBTI community remains common, as they are often perceived as transgressors of social and cultural values. Thus, they are often denied protection and recognition as legitimate human rights activists.¹⁹

THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

- During the 2013 Committee on Economic, Social, and Cultural Rights' review of Jamaica's third and fourth periodic reports, the State told the Committee that it had no intention to address the issue of decriminalisation of same-sex, consensual, adult relations.²⁰
- The Organization of American States, of which Jamaica is a member, adopted five resolutions between 2008 and 2012 condemning 'acts of violence and human rights violations perpetrated against individuals because of their sexual orientation and gender identity,' and urging states 'to adopt the necessary measures to prevent, punish, and eradicate' discrimination. Nevertheless, Jamaica has not taken active steps to amend legislation or policy in line with these resolutions.²¹
- To date, the state has not responded to the requested visit from 2012 by the Special Rapporteur on Human Rights Defenders.²²
- During the December 2011 electoral campaign, Jamaican Prime Minister Portia Simpson-Miller pledged that 'no one should be discriminated against because of their sexual orientation', and that the 'government should provide protection' for LGBTI people. However the government has not implemented any concrete steps in this direction.²³

ABOUT THIS BRIEFING PAPER

ISHR encourages States to consult UPR submissions by local activists and make recommendations to Jamaica regarding the protection of HRDs. An excellent local source of information on HRD security is J-FLAG (www.jflag.org). For further information on this briefing paper, contact Eleanor Openshaw (e.openshaw@ishr.ch).

RECOMMENDATIONS TO THE GOVERNMENT OF JAMAICA

- Enact and implement specific laws, policies and measures to recognise and protect HRDs, by giving full force and effect to the international Declaration on HRDs at the national level.
- Ensure the creation of a strong and independent National Human Rights Institution that adheres to the Paris Principles and includes a focal point for HRDs.
- Accept the request for a country visit from the Special Rapporteur on HRDs, which has been pending since 2012.
- Immediately repeal section 76 of the Offences against the Person Act and make the other necessary legislative changes to legalise the defence of the rights of the LGBTI population and criminalise discrimination on the basis of sexual orientation and gender identity.
- Combat impunity by ensuring the prompt, thorough and impartial investigation of all violations against HRDs, the prosecution of perpetrators, and access to effective remedies for victims.
- Demonstrate strong, high-level political support for HRDs through public statements by State officials, which recognise their important and legitimate work.

The 2014 UPR of Jamaica provides the government a platform to carry out pledges made during the 2012 election. While Prime Minister Simpson-Miller has acknowledged a poor track record in protecting members of the LGBTI community and those that defend LGBTI rights, the government must take concrete steps to ensure the protection of HRDs, establishing accountability for reprisals and combating impunity to solidify Jamaica as a State that respects human rights and the rule of law.

1. http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/16/14 (para 102.1)
2. http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/16/14 (paras 100.10- 100.14)
3. http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/16/14 (paras 101.4-101.5)
4. http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf
5. [http://jamaicansforjustice.org/download/human_rights_jamaica/110921H342.%202011\).pdf](http://jamaicansforjustice.org/download/human_rights_jamaica/110921H342.%202011).pdf)
6. <http://www.state.gov/documents/organization/204673.pdf>
7. <http://news.bbc.co.uk/2/hi/americas/3795247.stm>
8. Brian Williamson (killed 2004), Lenford Steve Harvey (killed 2005), Maurice Tomlinson (threatened 2012), Glover Graham (killed 2012).
9. <http://www.jamaicaobserver.com/news/New-report-says-human-rights-defenders-increasingly-targeted--attacked-in-the-Caribbean>
10. http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf (pg 26).
11. See, e.g. The Jamaica Observer, January 11, 2003; The Star, January 18, 2000
12. <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>
13. <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>
14. <https://knightcenter.utexas.edu/blog/00-14750-jamaica-fully-abolishes-criminal-defamation-unprecedented-legislative-action-caribbean>
15. <http://www.freedomhouse.org/report/freedom-press/2013/jamaica#.U-N7oPmSzTA>
16. <http://www.hrw.org/news/2012/07/18/jamaica-combat-homophobia>
17. <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>
18. <http://www.frontlinedefenders.org/jamaica>
19. <http://www.amnesty.org/en/library/asset/AMR01/006/2012/en/17203aa8-9881-42b5-8635-8be0150c846a/amr010062012en.pdf>
20. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13292&LangID=E>
21. <http://www.hrw.org/news/2012/07/18/jamaica-combat-homophobia>
22. http://www.ihrcl.ie/download/pdf/unsrhrd_report_on_nhris_ahrc2247_en1.pdf p.4
23. <http://www.amnesty.org/en/news/activists-worldwide-target-homophobia-jamaica-ukraine-and-south-africa-2013-05-16>

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