



Jamaica's Compliance with the International Covenant on Civil and Political Rights

Suggested List of Issues Prior to Reporting Relating to Violence and Discrimination on the Grounds of Sexual Orientation and Gender Identity and Expression

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

and

J-FLAG (Equality for All Foundation Jamaica)

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. A growing number of LGBTQI+ people fleeing human rights violations in Jamaica have requested legal assistance from The Advocates in applying for asylum in the United States.

J-FLAG (Equality for All Foundation Jamaica) is a human rights and social justice organization that advocates for the rights, livelihood and well-being of lesbian, gay, bisexual and transgender (LGBT) people in Jamaica. The organization was founded on December 10, 1998. J-FLAG's work seeks to build a Jamaican society that respects and protects the rights of everyone. Its board and staff are committed to promoting social change, empowering the LGBT community, and building tolerance for and acceptance of LGBT people.

J-FLAG continues to encourage Jamaicans to have a deeper understanding of their plurality and their democracy; it will continue seeking to raise the level of debate in the society about the meaning of tolerance and the acceptance of difference. Accordingly, J-FLAG forges relationships with a wide cross-section of organizations committed to strengthening democracy and the promotion of respect for all Jamaicans, regardless of sexual orientation, gender, creed, religion or social status. Over the twenty years of its existence, J-FLAG has stood as the foremost voice in Jamaica and the English-speaking Caribbean calling for the respect of LGBT peoples as citizens with the same rights and value as heterosexual Jamaicans.

EXECUTIVE SUMMARY

1. Jamaica, through its laws and police, routinely discriminates against people based on their perceived and actual sexual orientation and gender identity and expression. Lesbian, gay, bisexual, and transgender (LGBT) Jamaicans experience the criminalization of consensual same-sex sexual relations between adult men, public animus toward sexual and gender minorities, discrimination, harassment, violent attacks, the failure of the State to adequately investigate allegations of human rights violations on the grounds of sexual orientation and gender identity and expression, and the failure to protect against discrimination on the basis of HIV/AIDS status.
2. In 2016, the Human Rights Committee's concluding observations on the fourth periodic report of Jamaica called for the decriminalization of consensual adult same-sex sexual relations. Jamaica, however, continues to retain provisions under the Offences against the Person Act that criminalize consensual adult same-sex sexual relationships. These provisions promote discrimination against LGBT Jamaicans. The law criminalizes consensual sexual conduct between men, with penalties of up to ten years in prison with hard labor. Attempted sexual conduct between men is also criminalized, with penalties of up to seven years in prison. Physical intimacy, or the solicitation of such intimacy, between men is punishable by two years in prison. These laws also impact trans women because state and non-state actors regularly do not recognize them, legally or socially, as women.¹
3. Jamaica fails to protect LGBT persons against discrimination, harassment, and violent attacks. The law does not explicitly prohibit discrimination by state and non-state actors based on sexual orientation, gender identity, gender expression, or sex characteristics, which means that when such discrimination happens, LGBT Jamaicans are often without redress. LGBT individuals experience significant discrimination in housing, employment, the workplace, and other essential areas, and authorities fail to provide them with adequate protections against domestic violence.
4. Jamaica fails to promptly, thoroughly, and impartially investigate human rights violations against LGBT Jamaicans. The underreporting of anti-LGBT violence persists; many victims do not report violence on account of the criminalization of consensual adult same-sex sexual relations and because they expect police inaction.
5. Jamaica's failure to protect from discrimination on the basis of sexual orientation and gender identity and expression disproportionately affects HIV treatment for men who have sex with men and trans people. People living with HIV often avoid accessing treatment because they are afraid that their HIV status will be disclosed and because of the serious stigma against people living with HIV. Many individuals with HIV also report difficulty obtaining medical care in Jamaica and have had to seek it abroad. In addition, people in detention sometimes do not receive required medication for HIV, according to the UN Program on HIV and AIDS.²

¹ United States Department of State, *Jamaica 2022 Human Rights Report* (hereinafter referred to as "2022 Department of State Human Rights Report"), 16 (accessed Apr. 20, 2023), https://www.state.gov/wp-content/uploads/2023/02/415610_JAMAICA-2022-HUMAN-RIGHTS-REPORT.pdf.

² 2022 Department of State Human Rights Report, 5, 18.

6. In light of these findings, this report concludes that Jamaica fails to uphold its obligations under the International Covenant on Civil and Political Rights (ICCPR).

Jamaica Fails to Uphold its Obligations Under the ICCPR

7. Jamaica, as a State party to the International Covenant on Civil and Political Rights (ICCPR), has an obligation to respect the civil and political rights of all individuals. The fundamental civil and political rights protected by the Covenant include the freedom from discrimination, the right to equality between men and women, the right to life, the freedom from torture, the right to liberty and security of person, the right to recognition before the law, the right to privacy, the freedom of religion and belief, the freedom of expression, and the right to equality before the law.
8. The State has failed to discharge that obligation with respect to LGBT persons. Jamaica continues to criminalize consensual adult same-sex sexual relations between men. The State fails to adequately protect LGBT persons against discrimination, harassment and violent attacks—and fails to promptly, thoroughly, and impartially investigate allegations of human rights violations on the grounds of sexual orientation and gender identity and expression. In addition, Jamaica fails to protect against discrimination based on HIV/AIDS status.

I. Jamaica has not repealed the Offences against the Person Act that criminalizes consensual same-sex sexual relationships between adult men and thus promotes discrimination against the LGBT community.

9. In 2016, the Committee called for stronger anti-discrimination laws and the decriminalization of consensual same-sex sexual relationships between adult men under the Offences against the Person Act. The Committee also expressed concern that the continued criminalization of same-sex sexual activity was “promoting discrimination against homosexuals.”³
10. Section 76 of the Offences against the Person Act criminalizes consensual adult same-sex sexual relations between men, which is punishable by a prison term for up to ten years. Section 77 criminalizes attempted consensual adult same-sex sexual conduct between men, which is punishable by a prison term of up to seven years. Section 79 criminalizes any “gross indecency” between male persons, which is punishable by a prison term of up to two years.⁴
11. The Committee also recommended that Jamaica amend the Charter of Fundamental Rights and Freedoms in the Constitution of Jamaica to remove a savings clause that could “obstruct the amendment of legislation that enhances the rights of women or any other group.”⁵ Specifically, the Charter expressly states that any laws predating 2011 that relate to “sexual offences” shall not “be held to be inconsistent with or in contravention of the provisions of” the Charter.⁶ Moreover, the right to freedom from discrimination in the Charter is based only on the grounds

³ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted at its 3330th meeting* (1 Nov. 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶¶ 15-16.

⁴ Offences against the Person Act, §§ 76-77, 79 (Jamaica), <https://laws.moj.gov.jm/library/statute/the-offences-against-the-person-act>.

⁵ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted at its 3330th meeting* (1 Nov. 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 16.

⁶ Constitution of Jamaica, ch. III, § 12.

of “being male or female” and does not prohibit discrimination on other grounds, like sexual orientation and gender identity and expression.⁷

12. Since 2016, there have been several signs of progress toward implementing the Committee’s recommendations, but authorities have still not changed the relevant laws. In June 2017, Delroy Chuck, the Jamaican Minister of Justice, publicly supported decriminalization of same-sex sexual conduct between men, specifically supporting the decriminalization of consensual adult same-sex sexual relations between men.⁸
13. The following month, prominent religious leaders Bishop Howard Gregory, Head of the Anglican Church in Jamaica and the Cayman Islands, and Reverend Garnett Roper, President of the Jamaica Theological Seminary, publicly supported the decriminalization of consensual same-sex sexual relations between adult men as well.⁹
14. In December 2018, however, the Joint Select Committee issued a report after reviewing the Offences Against the Person Act and determined that no changes should be made to Sections 76, 77, or 79 due to the potential implications on the Saving Laws Clause: “Your Committee recognizes the sensitive nature of these provisions and the risk of an amendment to correct the existing anomaly in the penalties for grievous sexual assault and rape being deemed to remove the protection of the Saving Laws Clause and, therefore, recommended that the Parliament addresses the issue in a more fulsome manner in terms of the constitutional impact.”¹⁰
15. In 2020, the Inter-American Commission on Human Rights called on Jamaica to repeal the portion “of the Offences against the Person Act that criminalizes private consensual sexual activity between adults and consensual sexual conduct between men who have sex with men or homosexuals.”¹¹
16. The Caribbean Policy Research Institute also concluded that the sections of the Offences against the Person Act that criminalize same-sex sexual relationships between adult men should be repealed because the discrimination supported by these laws could be costing

⁷ Jamaica Charter of Fundamental Rights and Freedoms (Constitutional Amendment), No. 12-2011 (2011); *see also* Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted at its 3330th meeting* (Nov. 1, 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 15.

⁸ J-FLAG, *Creating a Legacy of Courage and Justice: 2017 Annual Report* (Kingston, Jamaica 2017), 8, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Annual-Report-2017.pdf>; *Chuck: Buggery law will only be changed by a referendum*, Jamaica Observer, June 16, 2017, <https://www.jamaicaobserver.com/news/chuck-buggery-law-will-only-be-changed-by-a-referendum/>.

⁹ J-FLAG, *Creating a Legacy of Courage and Justice: 2017 Annual Report* (Kingston, Jamaica 2017), 8, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Annual-Report-2017.pdf>.

¹⁰ Joint Select Committee, *Report of the Joint Select Committee* (Dec. 2018), 38-39, <https://rightstepsandpouitrees.files.wordpress.com/2018/12/joint-select-committee-report-review-of-sexual-offences-other-acts-december-2018.pdf>.

¹¹ IACHR, Report No. 400/20, Case 13.637, Gareth Henry and Simone Carline Edwards (Dec. 31, 2020), 23, https://www.oas.org/en/iachr/decisions/2020/JM_13.637_EN.PDF.

Jamaica approximately \$79 million annually in terms of economic output and government spending to uphold exclusions.¹²

17. Human rights violations arising out of these laws persist. In many instances, victims do not report human rights violations to law enforcement. A 2016 report called the Developmental Cost of Homophobia found that approximately 51.3% of persons in the LGBTQ community did not report incidents of human rights violations to the police because many believed that the police would not do anything.¹³

18. **Suggested questions** relating to Sections 76 (buggery), 77 (attempted buggery), and 79 (gross indecency) of the Offences against the Person Act, the law on consensual same-sex sexual relationships between adult men, and the Charter of Fundamental Rights and Freedoms:

- What, if any, concrete steps have been taken and are being taken to repeal Sections 76, 77, and 79 of the Offences against the Person Act and decriminalize consensual sexual relations between adult men? What has prevented those concrete steps from being successful?
- What steps have been taken to perform a “more fulsome” review of Sections 76, 77, and 79 following the report from the Joint Select Committee? If steps have been taken, what progress has been made on repealing these Sections? What steps have been taken to amend the Saving Laws Clause to remove impediments to amending the Offences against the Person Act? If no steps have been taken, what issues have prevented a review from being conducted? What concrete steps have or are being taken to address these impediments or issues?
- How many people have been arrested for consensual same-sex sexual conduct between adult men, attempted consensual same-sex sexual conduct between adult men, or gross indecency from 2016 to present? For each arrest, what evidence did law enforcement or prosecutors obtain prior to arrest to form the basis for the charge? How many arrests have led to prosecution? How many men have been convicted? How many charges under those laws have been dismissed? How does the government collect and maintain this data?
- What are the evidentiary standards for establishing grounds to arrest a person under Sections 76, 77, or 79? To what extent have those standards been met for arrests of actual or perceived gay and bisexual men or men who have sex with men? What safeguards are in place to ensure that those standards are met for every arrest and to hold accountable law enforcement officers who make arrests that do not satisfy these standards?

¹² CAPRI, *The Economic and Societal Costs of Sexuality-Based Discrimination in Jamaica* (Kingston, Jamaica 2019), 61, https://capricaribbean.org/sites/default/files/public/documents/report/the_economic_and_societal_costs_of_sexuality_based_discrimination_in_jamaica.pdf; J-FLAG, *National Dialogue on Human Rights in Jamaica* (Jamaica 2021), 40, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/National-Dialogue-on-Human-Rights-Report.pdf>.

¹³ *The Development Cost of Homophobia: The Case of Jamaica*, eds. Rochelle McFee & Elroy Galbraith (2016), 61, https://www.washingtonblade.com/content/files/2016/01/The-Developmental-Cost-of-Homophobia-The-Case-of-Jamaica_2016-1.pdf; J-FLAG, *National Dialogue on Human Rights in Jamaica* (Jamaica 2021), 15, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/National-Dialogue-on-Human-Rights-Report.pdf>.

- What concrete steps are being taken to prevent discrimination against victims who report crimes that are based on actual or perceived sexual orientation?
- What, if any, concrete steps have been taken to amend the Charter of Fundamental Rights and Freedoms to remove the savings clause for prior laws related to sexual offences?

II. Jamaica fails to adequately protect LGBT persons against discrimination, harassment, and violent attacks and has failed to enact anti-discrimination laws to protect LGBT Jamaicans.

19. LGBT Jamaicans experience significant discrimination in housing, employment, and other essential areas. They also experience high rates of anti-LGBT violence and harassment, and authorities fail to provide them with adequate protections against domestic violence.
20. In 2016, the Committee recommended that Jamaica “amend its laws and enact comprehensive antidiscrimination legislation to prohibit all forms of discrimination.”¹⁴ Since that time, LGBT Jamaicans have experienced anti-LGBT violence and harassment perpetrated by state and non-state actors.
21. Jamaica fails to protect LGBT persons against discrimination, harassment, and violent attacks. The law does not prohibit discrimination by state and non-state actors based on sexual orientation, gender identity, gender expression, or sex characteristics. Further, Jamaican authorities, including police officers, participate in and perpetrate anti-LGBT harassment and violence.
22. From 2011 through 2020, J-FLAG received a total of 652 reports of human rights violations against persons in the LGBT community, including violations of the right to housing, right to work, and right to privacy, among other rights.¹⁵
23. J-FLAG has identified numerous incidents of human rights violations against LGBT Jamaicans between January 2018 and July 2020, including thirty-eight physical assaults, forty-six verbal assaults, four incidents of cyberbullying, twenty-one expulsions from homes, twenty-three incidents of threats and intimidation, five mob attacks, one attempted poisoning, and one incident in which a Jamaican who was a member of the LGBT community was buried alive.¹⁶
24. In 2020, J-FLAG received twenty-six reports of human rights violations against members of the LGBT community. Individuals reported only seven of these instances to law enforcement, and four of those reports resulted in the victim experiencing discrimination at the hands of law enforcement.¹⁷ In 2021, J-FLAG received sixteen reports of human rights violations against the LGBT community, with each report containing more than one human rights violation.

¹⁴ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted at its 3330th meeting* (Nov. 1, 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶¶ 15-16.

¹⁵ J-FLAG, *Human Rights Violations 2011-2020 Analysis Report* (Jamaica 2021), <https://www.equalityjamaica.org/wp-content/uploads/2023/01/Human-Rights-Violations-2011-2020-Analysis-Report.pdf>.

¹⁶ J-FLAG, *National Dialogue on Human Rights in Jamaica* (Jamaica 2021), 15, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/National-Dialogue-on-Human-Rights-Report.pdf>.

¹⁷ J-FLAG, *2020 Annual Report* (Jamaica 2020), 27, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Annual-Report-2020.pdf>.

Individuals reported only four of these instances to law enforcement, while one person unsuccessfully attempted to make a report.¹⁸

25. Rainbow Road, a non-governmental organization that works on LGBT issues, reported 411 violent incidents against LGBT Jamaicans in 2022. This figure marks an increase from 377 violent incidents reported to Rainbow Road in 2011.¹⁹
26. Research conducted in 2020 by TransWave, a Jamaican non-governmental organization, found that half of transgender women in Jamaica had been physically assaulted in the prior year, with 20% reporting sexual assault. More than 80% had been verbally abused.²⁰
27. The Caribbean Policy Research Institute (CAPRI) report, *The Economic and Societal Costs of Sexuality Based Discrimination in Jamaica*, reported that LGBT Jamaicans are twenty times more likely to be victims of sexual assault than non-LGBT Jamaicans.²¹
28. In 2019, authorities denied members of the LGBT community use of the Montego Bay Cultural Center to hold Montego Bay Pride on the grounds that a government building could not be used to hold a function supporting same-sex marriage. When event organizers tried to find an alternative venue, angry vendors mobbed them, shouting anti-LGBT slurs. The event was ultimately cancelled due to the hostilities.²²
29. According to Human Dignity Trust, in 2020, a 21-year-old gender nonconforming Jamaican named Jason was “hailed off a bus by the driver, conductor and fellow passengers after the driver said he didn’t want a ‘battyman’ on his bus.” Then Jason was “assaulted and left bleeding on the pavement.”²³
30. In 2020, Allie Jackson met another man on a gay dating site and left to have a lunch date. Jackson never returned to work. A week later his car was found abandoned and set alight by the side of the road. His body was later found in a shallow grave.²⁴
31. In 2021, a group of three men reportedly lured an 18-year-old gay man to a location through a gay dating website. The men kidnapped him, restrained him, and took his cellphone, keys, and

¹⁸ J-FLAG, *2021 Human Rights Violation Report* (2022) (on file with the coauthors).

¹⁹ Dánica Coto, *Activists urge Jamaica to nix anti-sodomy laws amid violence*, Associated Press, Feb. 21, 2023, <https://apnews.com/article/politics-lgbtq-people-caribbean-violence-jamaica-cae0934a076e6419a10baa9d01274bf4>.

²⁰ *First-ever Jamaica transgender strategy looks beyond health*, UNAIDS, Jan. 8, 2021, https://www.unaids.org/en/resources/presscentre/featurestories/2021/january/20210108_first-ever-jamaica-transgender-strategy-looks-beyond-health.

²¹ J-FLAG, *National Dialogue on Human Rights in Jamaica* (Jamaica 2020), 40, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/National-Dialogue-on-Human-Rights-Report.pdf>.

²² Human Dignity Trust, “Jamaica,” accessed Apr. 20, 2023, <https://www.humandignitytrust.org/country-profile/jamaica/>; *The Fight for Montego Bay Pride Goes On*, Human Rights Campaign, Oct. 21, 2019, <https://www.hrc.org/news/the-fight-for-montego-bay-pride-goes-on>.

²³ Human Dignity Trust, “Jamaica,” accessed Apr. 20, 2023, <https://www.humandignitytrust.org/country-profile/jamaica/>.

²⁴ John Riley, *Robbers in Jamaica lured man through gay dating site, doused him in alcohol, and set him on fire*, Metro Weekly, Oct. 20, 2021, <https://www.metroweekly.com/2021/10/robbers-in-jamaica-lured-man-through-gay-dating-site-doused-him-in-alcohol-and-set-him-on-fire/>.

wallet. Then the three men doused the victim in rum, partially severed his penis, and set him on fire.²⁵

32. LGBT Jamaicans also experience housing insecurity, expulsion from housing, and high rates of homelessness because of anti-LGBT discrimination, violence, and harassment.
33. A 2019 report revealed that one in every five LGBT Jamaicans had experienced homelessness or had been displaced at least once in their lives. Landlords are permitted to terminate leases if there is allegedly “immoral” or “illegal” conduct occurring on the property, and landlords use these provisions as a pretext to discriminate against LGBT Jamaicans.²⁶
34. From 2011 to 2020, there were at least eight targeted home invasions, three targeted home destructions, and six arsons against LGBT Jamaicans.²⁷
35. J-FLAG identified nineteen incidents in which LGBT Jamaicans lost their housing because of physical violence between 2011 and 2020. In that same period, J-FLAG identified seventy-four incidents of LGBT Jamaicans being displaced or expelled from housing.²⁸
36. Some LGBT Jamaicans live in Kingston’s gullies or storm drains because they have no other place to live. These individuals report that police have beaten them, confiscated their phones, and burned their clothing.²⁹
37. LGBT Jamaicans also report significant discrimination in employment and other settings.
38. In 2019, a survey of 301 LGBT Jamaicans found that most “weren’t comfortable being openly LGBT in Jamaica” including because of “fear for life and threats of violence.” Many reported verbal abuse and discrimination in the workplace.³⁰
39. From 2011 to 2020, J-FLAG identified twenty-one incidents of employment discrimination against LGBT Jamaicans. Four cases were reported in 2020 alone. There are likely many more instances of anti-LGBT discrimination because there is a strong social stigma against members

²⁵ John Riley, *Robbers in Jamaica lured man through gay dating site, doused him in alcohol, and set him on fire*, Metro Weekly, Oct. 20, 2021, <https://www.metroweekly.com/2021/10/robbers-in-jamaica-lured-man-through-gay-dating-site-doused-him-in-alcohol-and-set-him-on-fire/>.

²⁶ J-FLAG, *Human Rights Violations Analysis Report: 2011-2020* (Jamaica 2021), 10-11, 16, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/Human-Rights-Violations-2011-2020-Analysis-Report.pdf>; Equality for All Foundation Jamaica Ltd., *Legal Analysis of ESC Rights in Jamaica* (2021), 10, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Legal-Analysis-of-ESCR-in-Jamaica-Simplified.pdf>; see also Universal Periodic Review of Jamaica: Submission on Human Rights Violations Against Transgender People in Jamaica, 2020, 4, https://www.upr-info.org/sites/default/files/documents/2020-10/transwave_ja_-_tranawave_jamaica.pdf.

²⁷ J-FLAG, *Human Rights Violations Analysis Report: 2011-2020* (Jamaica 2021), 11, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/Human-Rights-Violations-2011-2020-Analysis-Report.pdf>.

²⁸ J-FLAG, *Human Rights Violations Analysis Report: 2011-2020* (Jamaica 2021), 5-6, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/Human-Rights-Violations-2011-2020-Analysis-Report.pdf>.

²⁹ Rebekah Kebede, *Jamaican LGBTQ youths escape persecution in city storm drains*, Reuters, Mar. 1, 2017, <https://www.reuters.com/article/us-jamaica-lgbt-homeless/jamaican-lgbtq-youths-escape-persecution-in-city-storm-drains-idUSKBN1685AY>; Lucas Grindley, *Obama Isn’t Quiet About LGBT Rights, Even in Jamaica Trip*, Apr. 11, 2015, <https://www.advocate.com/world/2015/04/11/obama-isnt-quiet-about-lgbt-rights-even-jamaica-trip>.

³⁰ J-FLAG, *National Dialogue on Human Rights in Jamaica* (Jamaica 2021), 15, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/National-Dialogue-on-Human-Rights-Report.pdf>.

of the LGBT community, which causes some members of the LGBT population who have experienced discrimination to avoid reporting these incidents even to LGBT organizations for fear that their identities will be exposed by coming into contact with an LGBT organization. Further, LGBT people who have reported incidents of discrimination to J-FLAG often choose not to report them to government officials because they do not expect government support were they to file a report.³¹

40. Further, transgender Jamaicans experience discrimination, harassment, and violence because the law does not acknowledge their gender identities through modifications to their birth certificates and other forms of identification. Simple financial activities, such as opening a bank account, requesting financial aid, applying for a job, or renting an apartment become extremely difficult when personal documents do not match the holder's appearance or gender identity or gender expression.³²

41. **Suggested questions** relating to Jamaica's failure to adequately protect LGBT persons against discrimination, harassment, and violent attacks:

- What concrete steps is Jamaica taking to amend its laws and enact comprehensive anti-discrimination legislation to prohibit all forms of discrimination?
- What measures has the State taken to prevent and condemn acts of violence toward actual and perceived LGBT persons? What measures has the State taken to investigate such violent acts and hold perpetrators accountable?
- What measures has Jamaica taken, and what additional measures will it take, to prevent acts of violence motivated by prejudices against vulnerable and marginalized groups within Jamaican society, including acts perpetrated on account of an individual's real or perceived sexual orientation or gender identity or expression?
- What efforts will the State undertake to promote positive changes in cultural and societal attitudes toward LGBT people?
- What efforts has the State taken to ensure that healthcare providers do not discriminate against sexual and gender minorities and that such patients feel comfortable disclosing information to their providers without fear of harassment or stigmatization?
- What efforts has the State taken to ensure that LGBT Jamaicans do not experience housing or employment discrimination and what remedies are available to people who do experience such discrimination?

³¹ J-FLAG, *Human Rights Violations Analysis Report: 2011-2020* (Jamaica 2021), 7, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/Human-Rights-Violations-2011-2020-Analysis-Report.pdf>; *see also* 2022 Department of State Human Rights Report, 22.

³² Lamar Grant, *The long road to claiming rights for LGBT Jamaicans*, Jan. 12, 2023, <https://www.jamaicaobserver.com/letters/the-long-road-to-claiming-rights-for-lgbt-jamaicans/>.

III. Jamaica fails to promptly, thoroughly, and impartially investigate allegations of human rights violations on the grounds of sexual orientation and gender identity and expression.

42. Jamaica fails to promptly, thoroughly, and impartially investigate allegations of human rights violations on the grounds of sexual orientation and gender identity and expression. Anti-LGBT violence in Jamaica is underreported largely because of the criminalization of consensual same-sex sexual conduct between adult men and because of expected inaction by the police.
43. In 2016, the Committee “note[d] with concern reports of incidents of discrimination, harassment and violent attacks against lesbian, gay, bisexual and transgender persons and the alleged failure of the State party to prevent and investigate such attacks.”³³
44. The Committee recommended that Jamaica “ensure that cases of violence against lesbian, gay, bisexual and transgender persons are thoroughly investigated, that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims have access to effective remedies.” In addition, the Committee recommended that Jamaica “should conduct a national campaign to disseminate information about human rights and promote respect for diversity and the rights of all persons, especially lesbian, gay, bisexual and transgender persons.”³⁴
45. As mentioned above, LGBT Jamaicans are highly unlikely to report anti-LGBT violence to police or other government actors. In 2022, the U.S. Department of State found that underreporting of anti-LGBT violence occurred because victims generally expected inaction from the police.³⁵
46. Most LGBT Jamaicans did not report their last physical or sexual assault to the police. In fact, 41% of LGBT Jamaicans believe that the police would not do anything if they reported an incident.³⁶
47. Jamaican LGBT activist Norman McKenzie reports that when a gay man or transgender woman is killed in Jamaica, police officers often mutter “Them fe dead long time,” which translates as “Someone should’ve killed them a long time ago.”³⁷
48. LGBT Jamaicans also have less access to justice because of discriminatory laws. For example, Jamaica’s Sexual Offenses Act defines rape as nonconsensual penetration of a vagina by a penis—which fails to protect male victims of rape, as well as female victims of non-vaginal rape or vaginal penetration with an object or body part other than a penis. Because consensual same-sex sexual activity between men is criminalized, gay men, bisexual men, and men who

³³ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted at its 3330th meeting* (1 Nov. 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 17.

³⁴ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted at its 3330th meeting* (1 Nov. 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 18.

³⁵ 2022 Department of State Human Rights Report, 22.

³⁶ J-FLAG, *National Dialogue on Human Rights in Jamaica* (Jamaica 2021), 15, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/National-Dialogue-on-Human-Rights-Report.pdf>.

³⁷ Norman McKenzie, *OPINION: Jamaica’s gay sex ban fuels homophobic violence*, Openly, Feb. 19, 2021, <http://www.openlynews.com/i/?id=e5402f96-2d1b-43ac-8c25-1589c20ee005>.

have sex with men who are the victims of same-sex sexual assault have less ability to seek justice.

49. Other laws also provide LGBT Jamaicans with less access to justice. Jamaicans in same-sex relationships, for example, cannot pass citizenship to same-sex partners of Jamaicans married abroad. Same-sex Jamaican couples are also excluded from laws related to evidence and defamation that privilege married couples.³⁸
50. Reports indicate that many Jamaican police officers have abused, harassed, and discriminated against LGBT Jamaicans. From 2011 to 2020, four LGBT Jamaicans reported being sexually assaulted by the police, ten reported verbal harassment and threats by police, ten reported physical abuse by police officers, and eight reported police inaction. In 2020 alone, there were eleven report incidents of police discriminating against LGBT Jamaicans.³⁹
51. Gay rights advocate Joedaine Davis reported in 2019 that a man pulled a knife on her and threatened to “stab up the ba***boy [A derogatory term for a gay man in Jamaican Patois]” and “the police stood there and laughed.”⁴⁰
52. By not taking comprehensive and specific measures to prevent violence, torture, murder, rape and other acts of cruel and inhuman treatment toward the LGBT community, the State contributes to such violence and persecution. Jamaica should develop and implement a comprehensive training program for law enforcement officials and prison authorities to prevent human rights violations against LGBT Jamaicans.
53. **Suggested questions** relating to Jamaica’s failure to promptly, thoroughly, and impartially investigate allegations of human rights violations on the grounds of sexual orientation and gender identity and expression.
 - What measures has Jamaica taken, if any, to ensure that cases of violence against LGBT Jamaicans are impartially and thoroughly investigated, that the perpetrators are prosecuted and appropriately sanctioned, and that the victims have access to effective remedies?
 - What additional measures will Jamaica take to stop police violence against and verbal abuse of individuals, including LGBT individuals, and to ensure that police officers treat LGBT individuals with respect, including in situations when LGBT individuals report crimes that have been perpetrated against them?

³⁸ J-FLAG, *Reporting on the Jamaican LGBT Community: A Guide for Jamaican and International Journalists*, by Elton Johnson (Kingston, Jamaica 2020), 11, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Media-Guide-Manual-Online.pdf>.

³⁹ J-FLAG, *Human Rights Violations 2011-2020 Analysis Report* (Jamaica 2021), 12, 21, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/Human-Rights-Violations-2011-2020-Analysis-Report.pdf>; *see also* J-FLAG, *National Dialogue on Human Rights in Jamaica* (Jamaica 2021), 15, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/National-Dialogue-on-Human-Rights-Report.pdf>; IACHR, Report No. 401/20, Case 13.095, T.B. and S.H. Jamaica (Dec. 31, 2020), 9, https://www.oas.org/en/iachr/decisions/2020/JM_13.095_EN.PDF.

⁴⁰ Corey Robinson, *Editor’s Forum: HWT, downtown no-go zones for gays - Advocates say they’re targets of violence, ridicule by cops*, Jamaica Gleaner, May 5, 2019, <https://jamaica-gleaner.com/article/lead-stories/20190505/editors-forum-hwt-downtown-no-go-zones-gays-advocates-say-theyre>.

- What measures has Jamaica taken, if any, to conduct a national campaign to disseminate information about human rights and promote respect for diversity and the rights of all persons, especially lesbian, gay, bisexual, and transgender persons?
- How is the government ensuring that victims of anti-LGBT violence can safely report violence or harassment?
- What steps do investigators and law enforcement officers take to ensure that LGBT individuals are protected from discrimination, harassment, and extortion based on allegations that they are sexual and/or gender minorities?
- What efforts has the State Party undertaken to encourage people to report torture and ill treatment on account of their sexual orientation and/or gender identity or expression and to protect victims who make such reports from reprisals?

IV. Jamaica fails to protect against discrimination on the basis of HIV/AIDS status.

54. The Committee expressed concern about the ongoing discrimination against people living with HIV/AIDS, including LGBT people and girls aged 15 to 19 years, recommending additional legislative amendments to better protect health status and people living with HIV/AIDS.⁴¹ The Committee also recommended that Jamaica commit additional financial and human resources to ensure the effective implementation of the National Integrated Strategic Plan for Sexual Health and HIV (2014-2019) and implementation of the National Workplace Policy on HIV/AIDS.⁴²
55. The National Workplace Policy on HIV/AIDS, which establishes guiding principles—including that employers should not discriminate on the basis of perceived HIV status⁴³—does not prohibit discrimination against with HIV/AIDS generally.⁴⁴ In fact, the stigma of HIV/AIDS can make obtaining services in a healthcare setting difficult.⁴⁵
56. The 2019 Mystery Shopper Assessment Report conveyed that twenty-eight percent of participants found it difficult to get assistance at healthcare centers for HIV testing and related issues.⁴⁶ The Report concluded that the difficulty might be attributable to “the general levels of service offered in the health sector in Jamaica rather than as a result of one’s sexual orientation, real or perceived.”⁴⁷ One participant, however, a trans woman, shared that facility

⁴¹ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted at its 3330th meeting* (1 Nov. 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶¶ 19-20.

⁴² Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted at its 3330th meeting* (1 Nov. 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶¶ 19-20.

⁴³ National Workplace Policy on HIV/AIDS, Ministry of Labour & Social Security (Jamaica 2008), https://moh.gov.jm/wp-content/uploads/2015/07/NATIONAL_WORKPLACE_POLICY_ON_HIV_February-2008.pdf.

⁴⁴ J-FLAG, *The Gay Agenda* (Kingston, Jamaica 2018), 23, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/The-Gay-Agenda.pdf>.

⁴⁵ J-FLAG, *The Gay Agenda* (Kingston, Jamaica 2018), 15, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/The-Gay-Agenda.pdf>.

⁴⁶ J-FLAG, *Mystery Shopper Assessment Report 2019* (Jamaica 2019), 2, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Mystery-Shopper-Assessment-Report.pdf>.

⁴⁷ J-FLAG, *Mystery Shopper Assessment Report 2019* (Jamaica 2019), 2, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Mystery-Shopper-Assessment-Report.pdf>.

staff snickered and stared while she waited to see medical staff.⁴⁸ In a 2020 Mystery Shopper Follow-up Report, participants had mostly positive experiences,⁴⁹ but there was at least one instance in which security stared at a participant who “could hear them making small chatter about me.”⁵⁰ Both reports recognized that negative experiences were more prevalent with security and administrative staff than medical professionals.⁵¹ Privacy also remains a concern because at least one facility lacked soundproof rooms such that “there wasn’t any privacy” while dealing with medical professionals.⁵²

57. Jamaica has committed to the United Nations’ goal to achieve 90-90-90 targets regarding HIV/AIDS detection, treatment, and suppression by 2030.⁵³ As of March 2019, Jamaica had only achieved approximately 84-47-62.⁵⁴ One issue in achieving these targets is patient retention, which is affected by concerns that someone’s HIV status will be disclosed.⁵⁵ Another concern is that HIV status is still stigmatized and leads to discrimination.⁵⁶
58. The U.S. Department of State has also reported that stigma and discrimination have contributed to low treatment numbers for HIV, and the disease continues to disproportionately affect men in the LGBT community.⁵⁷
59. Although Jamaica has attempted to reduce HIV-related stigma and discrimination through various efforts including training for healthcare providers, sensitization efforts targeted at lawmakers and law enforcement, and other targeted efforts to reduce discrimination against women with HIV.⁵⁸ The extent to which these efforts have resulted in either reduced stigma or reduced discrimination is unclear.

⁴⁸ J-FLAG, *Mystery Shopper Assessment Report 2019* (Jamaica 2019), 5, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Mystery-Shopper-Assessment-Report.pdf>.

⁴⁹ J-FLAG, *Mystery Shopper 2019 Follow-up Report* (Jamaica 2020), 2, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Mystery-Shopper-Follow-Up-Report.pdf>.

⁵⁰ J-FLAG, *Mystery Shopper 2019 Follow-up Report* (Jamaica 2020), 5, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Mystery-Shopper-Follow-Up-Report.pdf>.

⁵¹ J-FLAG, *Mystery Shopper Assessment Report 2019* (Jamaica 2019), 9, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Mystery-Shopper-Assessment-Report.pdf>; J-FLAG, *Mystery Shopper 2019 Follow-up Report* (Jamaica 2020), 7, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Mystery-Shopper-Follow-Up-Report.pdf>.

⁵² J-FLAG, *Mystery Shopper Assessment Report 2019* (Jamaica 2019), 8, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Mystery-Shopper-Assessment-Report.pdf>.

⁵³ J-FLAG, *Training Manual for Health Care Providers: Providing Services for Lesbian, Gay, Bisexual, and Transgender Persons (LGBT)* (Jamaica, 2d ed. 2018), 2, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/Training-Manual-for-Healthcare-Workers-March-2018.pdf>.

⁵⁴ Peta-Gay Hodges, *Stigma Stymies Progress in Achieving HIV Targets*, Jamaica Information Services, Nov. 24, 2019, <https://jis.gov.jm/stigma-stymies-progress-in-achieving-hiv-targets/>.

⁵⁵ Cameron Scott, *Dispatch from Jamaica on the fight against HIV/AIDS*, Institute for Global Health Sciences, Nov. 10, 2021, <https://globalhealthsciences.ucsf.edu/news/dispatch-jamaica-fight-against-hivaids>.

⁵⁶ Peta-Gay Hodges, *Stigma Stymies Progress in Achieving HIV Targets*, Jamaica Information Services, Nov. 24, 2019, <https://jis.gov.jm/stigma-stymies-progress-in-achieving-hiv-targets/>.

⁵⁷ United States Department of State, *Jamaica 2020 Human Rights Report* (2020), 16 (accessed Apr. 20, 2023), <https://www.state.gov/wp-content/uploads/2021/03/JAMAICA-2020-HUMAN-RIGHTS-REPORT.pdf>.

⁵⁸ United States Department of State, *Jamaica 2020 Human Rights Report* (2020), 16 (accessed Apr. 20, 2023), <https://www.state.gov/wp-content/uploads/2021/03/JAMAICA-2020-HUMAN-RIGHTS-REPORT.pdf>.

60. In 2020, the Caribbean Policy Research Institute estimated that discrimination based on HIV status could be costing Jamaica \$424 million annually,⁵⁹ excluding the economic cost of discrimination against LGBT persons generally.

61. **Suggested questions** relating to discrimination based on HIV/AIDS status:

- What, if any, steps are being taken to ensure Jamaica achieves its 90-90-90 target regarding HIV/AIDS by 2030?
- What, if any, concrete steps have been and are being taken to reduce the stigma associated with HIV/AIDS status?
- What, if any, concrete steps have been taken and are being taken to prevent or prohibit discrimination on the basis of HIV/AIDS status generally?

⁵⁹ CAPRI, *The Economic and Societal Costs of Sexuality-Based Discrimination in Jamaica* (Kingston, Jamaica 2019), 61, https://capricaribbean.org/sites/default/files/public/documents/report/the_economic_and_societal_costs_of_sexuality_based_discrimination_in_jamaica.pdf.