



Home Office

# **Country Policy and Information Note**

## **Jamaica: Sexual orientation and gender identity**

**Version 2.0**

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# Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

## Country information

The COI within this note has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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# Policy guidance

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## 1. Introduction

### 1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state and/or non-state actors because of the person's actual or perceived sexual orientation and/or gender identity.

### 1.2 Points to note

1.2.1 This note provides policy guidance on the general situation of gay men, lesbians, bisexuals and transgender persons. They are referred collectively as 'LGBT persons', though the experiences of each group may differ.

1.2.2 Decision makers must also note the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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## 2. Consideration of issues

### 2.1 Credibility

2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Particular social group

2.2.1 LGBT persons in Jamaica form a particular social group (PSG) within the meaning of the Refugee Convention. This is because they share a common characteristic that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society.

2.2.2 Although LGBT persons in Jamaica form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.

2.2.3 For further information and guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.3 Assessment of risk

### a. General points

- 2.3.1 Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as an LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why the person will do so.
- 2.3.2 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.
- 2.3.3 But if the reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded.
- 2.3.4 For further guidance, see the [Asylum Instruction on Sexual Identity Issues in the Asylum Claim](#)

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### b. State treatment

- 2.3.1. Consensual sex between adult males is proscribed by law; prosecutions are rarely pursued although no official statistics are available. Jamaican law does not criminalize sexual orientation or changes to gender identity itself, nor does the government condone discrimination or violence against LGBT persons (see [Legislation](#)).
- 2.3.2. In general there is no real risk of state persecution as the authorities do not actively seek to prosecute LGBT persons and there is no real risk of prosecution even when the authorities become aware of such behaviour. Each case must however be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.

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### c. Societal treatment

- 2.3.3. Jamaica is a deeply homophobic society and there are reports of LGBT persons facing a high level of both physical and sexual violence from non-state agents (and some rogue state agents) and many live in constant fear. LGBT persons are targeted for mob violence, 'corrective rape', extortion, harassment, forced displacement and discrimination, and are taunted, threatened, fired from their jobs, thrown out of their homes, and suffer ill-treatment including being beaten, stoned, raped, or killed (see [Treatment by, and attitudes of, state authorities](#) and [Societal treatment and attitudes](#)).
- 2.3.4. In the country guidance case of [DW \(Homosexual Men; Persecution; Sufficiency of Protection\) Jamaica CG \[2005\] UKAIT 00168 \(28 November 2005\)](#) (heard on 28 October 2005), the Tribunal found that men who are

perceived to be gay and have for this reason suffered persecution in Jamaica are likely to be at risk of persecution on return. Men who are perceived to be gay and have not suffered past persecution may be at risk depending on their particular circumstances [Headnote].

2.3.5. The Upper Tribunal in the country guidance case of [SW \(lesbians - HJ and HT applied\) Jamaica CG \[2011\] UKUT 251 \(IAC\) \(24 June 2011\)](#) (heard on 7 December 2009 and 30 November 2010) also noted that Jamaica is a deeply homophobic society and that there is a high level of societal violence, finding that being a lesbian (actual or perceived) brings a risk of violence, up to and including 'corrective' rape and murder. [para 107(1)]

2.3.6. The Upper Tribunal also found at paras107(3)–107(8) that:

- Not all lesbians are at risk. Those who are naturally discreet, have children and/or are willing to present a heterosexual narrative for family or societal reasons may live as discreet lesbians without persecutory risk, provided that they are not doing so out of fear;
- Single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion;
- Because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. Newcomers in rural communities will be the subject of speculative conclusions, derived both by asking them questions and by observing their lifestyle and unless they can show a heterosexual narrative, they risk being identified as lesbians. Perceived lesbians also risk social exclusion (loss of employment or being driven from their homes);
- A manly appearance is a risk factor, as is rejection of suitors if a woman does not have a husband, boyfriend or child, or an obvious and credible explanation for their absence;
- In general, younger women who are not yet settled may be at less risk; the risk increases with age. Women are expected to become sexually active early and remain so into their sixties, unless there is an obvious reason why they do not currently have a partner, for example, recent widowhood;
- Members of the social elite may be better protected because they are able to live in gated communities where their activities are not the subject of public scrutiny. Social elite members are usually from known families, wealthy, lighter skinned and better educated; often they are high-ranking professional people.

2.3.5 LGBT persons who live openly will be at risk of discrimination, intolerance, harassment, ill-treatment and violence by non-state actors which will, in many cases, amount to persecution.

2.3.6 For further information and guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#)

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## 2.4 Protection

- 2.4.1 In the country guidance case of [DW](#), the Tribunal held that if the person is at risk of persecution or serious harm from a non-state actor, as a general rule, the authorities do not provide gay men with a sufficiency of protection.
- 2.4.2 Similarly, in the country guidance case of [SW](#), the Tribunal found that where a real risk of persecution or serious harm is established, the Jamaican state offers lesbians no sufficiency of protection.
- 2.4.3 Since the promulgation of these country guidance cases, the Jamaica Constabulary Force (JCF) have taken steps to address homophobic and transphobic violence. In 2011, the JCF developed and launched a policy on diversity to ensure LGBT people can safely file police reports, although it is unclear the extent to which this has been successful (if at all). The Jamaican Government also acknowledges that there is a need for targeted anti-discrimination legislation to address violations against LGBT persons citing that families and neighbours often drive LGBT people from their homes and communities; landlords refuse to rent to LGBT persons, denying them housing; health providers stigmatise them when they seek services; and employers arbitrarily fire them (see [Treatment by, and attitudes of, state authorities: Government](#) and [Societal treatment and attitudes](#)).
- 2.4.4 However, in spite of the procedures the Government has put in place, it has so far failed to prevent and protect against violence and discrimination, or to punish the perpetrators of crimes against LGBT persons. In some cases rogue police officers themselves are perpetrators of violence and extortion against LGBT people. They have also failed to intervene when attacks are happening, arrest suspects or investigate homophobic crimes. There remains a prevalence of homophobic attitudes within the police force and some police protection remains inadequate (see [Treatment by, and attitudes of, state authorities: Police](#)).
- 2.4.5 Consequently, there is continuing evidence that LGBT people are not provided with effective protection and that the authorities fail to punish those responsible for such human rights abuses.
- 2.4.6 For further information on protection in Jamaica, see the country policy and information note on [Jamaica: background information, including actors of protection and internal relocation](#).
- 2.4.7 For further guidance on assessing the availability or not of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.5 Internal relocation

- 2.5.1 Where the threat is from the state, internal relocation is not a viable option.
- 2.5.2 Where the threat is from a non-state actor, decision makers should consider each case on its individual circumstances.
- 2.5.3 The question of internal relocation was not considered in the country guidance case of [DW](#) and the Tribunal accordingly gave no general guidance on the matter. The Tribunal did however note that there are likely to be difficulties in finding safety through internal relocation.
- 2.5.4 In the 2011 country guidance case of [SW](#), the Tribunal found that single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion and because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. It was also found that perceived lesbians also risk social exclusion (loss of employment or being driven from their homes).
- 2.5.5 Decision makers must therefore give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person.
- 2.5.6 Internal relocation will not be an option if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution.
- 2.5.7 Decision makers need to consider the ability of the persecutor to pursue the person in the proposed site of relocation, and whether effective protection is available in that area. Decision makers must also consider factors such as the age, health, financial circumstances and support network of the person, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including their ability to sustain themselves.
- 2.5.8 See the country policy and information note on [Jamaica: background information, including actors of protection and internal relocation](#).
- 2.5.9 For further guidance on internal relocation, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.6 Certification

- 2.6.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.6.2 For guidance on certification, see the [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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### 3. Policy summary

- 3.1.1 Consensual sex between adult males is proscribed by law but prosecutions are rarely pursued.
- 3.1.2 While LGBT people are not in general at risk from state actors, some rogue state actors are responsible for acts of violence, abuse and extortion of members of the LGBT community.
- 3.1.3 Jamaica is a deeply homophobic society and LGBT persons who live openly will be at risk of discrimination, intolerance, harassment, ill-treatment and violence by non-state actors which in many cases is likely to amount to persecution.
- 3.1.4 Where LGBT persons do face a real risk of harm or ill-treatment by non-state actors, the authorities do not provide effective protection.
- 3.1.5 Where LGBT persons do encounter societal hostility they may be able to avoid this by moving elsewhere in Jamaica, but because the risks arise from perceived as well as actual sexual orientation, internal relocation does not necessarily enhance safety and will depend on the individual circumstances of the person.
- 3.1.6 Internal relocation will not generally be an option for a single woman who may be perceived as a lesbian, whether or not this is the case.
- 3.1.7 Internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.
- 3.1.8 Claims are unlikely to be certifiable as 'clearly unfounded'

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## 4. Legal context

### 4.1 Legislation

- 4.1.1 The Offences Against the Person Act of 1864, which is still in force, contains the following provisions:

#### Article 76 (Unnatural Crime)

"Whosoever shall be convicted of the abominable crime of buggery [anal intercourse] committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years."

#### Article 77 (Attempt)

"Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour."

#### Article 78 (Proof of Carnal Knowledge)

"Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only."

#### Article 79 (Outrages on Decency)

"Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour."<sup>1</sup>

- 4.1.2 The Inter- American Commission on Human Rights 'report on the Human Rights Situation in Jamaica' dated 10 August 2012 noted that:

'Jamaica's laws do not criminalize the status of being homosexual but rather outlaw conduct. The Jamaican Offences Against the Person Act (also referred to as the "buggery" law) prohibits anal sex between men, in public or in private, punishable by 10 years in prison with hard labour. The law also makes "gross indecency" between two men, the acts of which are not defined, a misdemeanour punishable by 2 years in prison. Moreover, there

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<sup>1</sup> Jamaican Government, Ministry of Justice, Offences against the Person Act 1864 (Last amendment 2010), <http://moj.gov.jm/laws/offences-against-person-act> [date accessed 10 January 2017]

is 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.<sup>2</sup>

- 4.1.3 The US State Department's report on human rights practices for 2015 ('the USSD report for 2015') noted that:

'The law prohibits "acts of gross indecency" (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, and provides a penalty of two years in prison for the offense. There is also an "antibuggery" law that criminalizes consensual as well as non-consensual anal intercourse, punishable by up to 10 years in prison. During the year [2015], it was only enforced in cases of sexual assault and child molestation and was not used to prosecute consensual same-sex sexual conduct between men. Homophobia was widespread in the country.'<sup>3</sup>

- 4.1.4 The Antillean Media Group (AMG) reported in June 2016 that:

'When the law is taken literally, it is not illegal to be gay in Jamaica; it is only illegal to behave in a certain way. Put simply, it is legal for gay men to exist, but it is not acceptable for them to act in accordance with their identity. Within this context, gay men must keep an integral component of who they are hidden for fear of adverse ramifications.'<sup>4</sup>

- 4.1.5 Amnesty International's annual report for 2016/17<sup>5</sup> repeated their assessment from their 2015/16 report<sup>6</sup> that: 'There remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity [...] Consensual sex between men remained criminalized.'

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## 4.2 Challenges to legislation

- 4.2.1 Freedom House's freedom in the world report for 2016 noted that:

'Legislation against sodomy, which is punishable by 10 years in prison with hard labour, was challenged in court in 2014; however, the case was

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<sup>2</sup> Inter-American Commission on Human Rights, Report on the Human Rights Situation in Jamaica, 10 August 2012, <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> [date accessed 14 December 2016]

<sup>3</sup> United States Department of State, 2015 Country Reports on Human Rights Practices - Jamaica, 13 April 2016 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253025> [date accessed 14 December 2016]

<sup>4</sup> Antillean Media Group, With anti-gay laws, the state is complicit in violence against LGBT people, 1 June 2016 <http://www.antillean.org/jamaica-buggery-law-complicity-violence-876/> [date accessed 4 January 2017]

<sup>5</sup> Amnesty International, Annual Report - Jamaica 2016/17 (page 209), 23 February 2017, <https://www.amnesty.org.uk/files/2017-02/POL1048002017ENGLISH.PDF?xMHdSpNaJBUNbiuvtMCJvJrnGuLiZnFU> [date accessed 23 February 2017]

<sup>6</sup> Amnesty International, Annual Report- Jamaica 2015/16, 24 February 2016 <https://www.amnesty.org/en/countries/americas/jamaica/report-jamaica/> [date accessed 14 December 2016]

withdrawn that year after death threats were made against the claimant and his family.’<sup>7</sup>

- 4.2.2 The Jamaica Gleaner paper further reported on the dropped legal challenge stating that:

‘A Jamaican gay man has dropped his court case challenging the anti-buggery law because of what he says are fears for his safety. Javed Jaghai, who had brought the case to the Supreme Court, had argued that the anti-sodomy laws violated his and constitutional rights and those of other people too. But he says he dropped the case because of personal threats, the burden that the litigation was putting on his family, and continuing incidents of violence against Jamaica’s lesbian, gay, bisexual and transgender, the LGBT community.’<sup>8</sup>

- 4.2.3 The same source also reported in December 2015 of a fresh legal challenge to the anti-sodomy law. The source noted that:

‘A Jamaican gay rights activist has brought a rare legal challenge to the nation’s anti-sodomy laws that criminalise consensual sex between men, the Canadian advocacy group he works for said. Gay rights campaigner and attorney Maurice Tomlinson recently filed a claim in Jamaica’s Supreme Court challenging the constitutionality of the rarely-used 1864 laws that ban anal sex and anything interpreted as "gross indecency" between men. In a statement yesterday from the Canadian HIV/AIDS Legal Network, Tomlinson said longstanding laws are a "gross violation of my human rights" and those of all LGBT people in Jamaica. He is a senior policy analyst with the Toronto-based advocacy organisation.’<sup>9</sup>

- 4.2.4 According to an article in Attitude magazine on 16 January 2017 the case is still at the pre-trial stage.<sup>10</sup>

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### 4.3 Government review of legislation

- 4.3.1 In May 2015 the Jamaica Gleaner reported on the mounting pressure from the UN for Jamaica to repeal anti-gay laws. The article noted:

‘More international pressure is being applied on Jamaica to repeal laws believed to be infringing on the human rights of vulnerable groups including gays, lesbians, bisexuals and transgendered (LGBT) people. [...] calls came from representatives of several countries, including Canada, Sweden, and the United States for Jamaica to change its laws and address cultural issues that are out of step with global human rights provisions. The representative

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<sup>7</sup> Freedom House, Freedom in the World 2016, 29 August 2016

<https://freedomhouse.org/report/freedom-world/2016/jamaica> [date accessed 14 December 2016]

<sup>8</sup> The Jamaica Gleaner, Jamaican Gay Man Drops Court Challenge Against Anti-Buggery Law, 29 August 2014, <http://jamaica-gleaner.com/power/55113> [date accessed 10 January 2017]

<sup>9</sup> The Jamaica Gleaner, Jamaica Activist Brings Legal Challenge To Anti-Sodomy Laws, 9 December 2015 <http://jamaica-gleaner.com/article/world-news/20151209/jamaica-activist-brings-legal-challenge-anti-sodomy-laws> [date accessed 10 January 2017]

<sup>10</sup> Attitude Magazine, ‘Anti-gay sentiment is on the rise in Jamaica – but there are signs of hope’ 16 January 2017 <http://attitude.co.uk/anti-gay-sentiment-is-on-the-rise-in-jamaica-but-there-are-signs-of-hope/> [date accessed 22 February 2017]

from Great Britain, Matthew Buckley, took issue with the fact that changes to the Charter of Fundamental Rights and Freedoms did not protect against discrimination on grounds of sexual orientation.<sup>11</sup>

4.3.2 The Jamaica Observer reported also reported in May 2015 that:

'Minister of Justice, Senator Mark Golding, says that the Government has rejected suggestions from United Nations member states to repeal current buggery legislations and legalise same-sex marriages. In a statement to the Senate today [22 May 2015] on the United Nation's recent periodic review of Jamaica's human rights record, Senator Golding said that there were "recurring recommendations made by some member states that did not enjoy Jamaica's support."<sup>12</sup>

4.3.3 The International Lesbian, Gay, Bisexual, Trans and Intersex Association for Latin America and the Caribbean (ILGALAC) noted in July 2015 that:

'In 2011, British prime minister, David Cameron, threatened to withhold aid from governments that do not reform legislation banning homosexuality. However, Justice Minister Mark Golding had earlier told the panel that several steps have been taken to safeguard the rights of all, including implementation of a diversity policy for the police.'

'Lobbyists believe the removal of the buggery law will help in HIV/AIDs prevention and treatment among members of the LGBT community. However, last year, a local poll found that 91 per cent of Jamaicans believe lawmakers should not repeal the controversial buggery law.'<sup>13</sup>

4.3.4 Pink News reported in March 2016 that:

'The country's new Prime Minister Andrew Holness hinted at a strategy to get round international pressure on the law this week – by suggesting a referendum. The leader of the Jamaican Labour Party, who ousted PM Portia Simpson-Miller in an election, signalled that he would hold "public votes" on "key constitutional and social issues" – widely interpreted to suggest the sodomy law will be put to a vote.'

4.3.5 However the article further notes that: 'An editorial in the Jamaica Gleaner newspaper noted that such a vote has very little chance of securing a majority in favour of repealing the law.'

'The country's previous Prime Minister had been elected on a platform calling for the anti-gay law to be scrapped. Portia Simpson-Miller claimed she would consider decriminalising homosexuality before her election in

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<sup>11</sup> The Jamaica Gleaner, UN Pressure Mounts For Jamaica To Repeal Anti-Gay Laws, Improve LGBT Environment, 13 May 2015 <http://jamaica-gleaner.com/article/news/20150513/un-pressure-mounts-jamaica-repeal-anti-gay-laws-improve-lgbt-environment> [date accessed 11 January 2017]

<sup>12</sup> The Jamaica Observer, Jamaica rejects buggery law repeal, same-sex marriage. 22 May 2015 <http://www.jamaicaobserver.com/latestnews/Jamaica-rejects-buggery-law-repeal--same-sex-marriage> [date accessed 10 January 2017]

<sup>13</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association for Latin America and the Caribbean (ILGALAC), UN Pressure Mounts For Jamaica To Repeal Anti-Gay Laws, Improve LGBT Environment, 7 July 2015, <http://ilga-lac.org/en/un-pressure-mounts-jamaica-repeal-anti-gay-laws-improve-lgbt-environment/> [date accessed 11 January 2017]

2011 – but went back on her promise. She was later accused of “betraying” voters on the issue.’<sup>14</sup>

- 4.3.6 AMG noted in an article titled ‘With anti-gay laws, the state is complicit in violence against LGBT people’ dated 1 June 2016 that:

‘The newly-installed government of Prime Minister Andrew Holness has similarly rejected recent recommendations from the United Nations to repeal the law. Instead, the government has indicated that it will take the issue of a repeal to a national referendum which, given the extreme opposition of 2011, is anything but certain. The mere idea of dispensing with the law last saw thousands of Jamaicans rallying in the streets in protest.’<sup>15</sup>

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## 5. Treatment by, and attitudes of, state authorities

### 5.1 Government

- 5.1.1 Human Rights First’s report ‘The World as it Should Be’ Advancing the Human Rights of LGBT People in Jamaica’ updated in July 2015 noted that:

‘Jamaican Public Defender Arlene Harrison Henry, who has been a perennial advocate for the rights of LGBT people, explained to Human Rights First that elected officials and leaders are not ready to break political rank with their constituents and support the rights of LGBT people. Thus, strong political and state leadership is required to reduce homophobia in the country. In a climate of entrenched homophobia, Dr. Sandra Knight of the National Family Planning Board is one of few prominent individuals within the Jamaican government who demonstrates support for the rights of all people, including members of the LGBT community. Many activists note that support at high levels of government is essential to the movement towards LGBT equality. Dr. Knight noted that the National Family Planning Board, an institution housed within the Ministry of Health, exists to “serve every single Jamaican.” However, Dr. Knight acknowledges the practical obstacles to the full realization of this mandate, as illustrated by the discrimination LGBT people face in healthcare facilities.’<sup>16</sup>

- 5.1.2 The Guardian reported in August 2015 of Jamaica’s first pride event, the article noted that the now former Prime Minister Portia Simpson Miller had:
- ‘[...] raised hopes among gay rights activists in the run-up to the 2011 elections, when she said she would not discriminate against gay politicians. Her comments offered a marked contrast to the previous leader, Bruce Golding, who vowed he would never allow a gay member in his cabinet; but many activists now feel that Miller missed an opportunity for change. Nearly

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<sup>14</sup> Pink News, Jamaica might hold ‘referendum’ on anti-gay law, 8 March 2016, <http://www.pinknews.co.uk/2016/03/08/jamaica-might-hold-referendum-on-anti-gay-law/> [date accessed 11 January 2017]

<sup>15</sup> Antillean Media Group (AMG), With anti-gay laws, the state is complicit in violence against LGBT people, 1 June 2016, <http://www.antillean.org/jamaica-buggery-law-complicity-violence-876/> [date accessed 11 January 2017]

<sup>16</sup> Human Rights First, ‘The World as it Should Be’ Advancing the Human Rights of LGBT People in Jamaica, updated July 2015, <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf> [date accessed 11 January 2017]

five years later, the colonial-era legislation that outlaws homosexuality remains on the statutes.'

The same report also noted that during Jamaica's first Pride celebration: 'justice minister Mark Golding sent a message of support to organisers, saying: "I believe that the views of the Jamaican society are evolving towards greater tolerance and against violence and other forms of discrimination".'<sup>17</sup>

#### 5.1.3 The Guardian paper reported in February 2016 that:

'While Jamaica faces an ongoing battle to repeal the law that criminalises gay sex, its justice minister, Mark Golding, and mayor of Kingston, Angela Brown Burke, have shown their support for a pride event. Newspaper editorials and even a few clergy have also called for equal rights – all milestones lawyer and gay rights activist Maurice Tomlinson says would have been inconceivable a few years ago.'<sup>18</sup>

#### 5.1.4 BBC News reported on the reaction following the attack on the Orlando Pulse nightclub, BBC news noted that:

'Jamaica's attorney general has sparked criticism after saying it was "disrespectful" to Jamaican law for the US embassy to fly a rainbow flag following the Orlando shooting. [...]The embassy in Kingston joined other US missions around the world in flying the rainbow flag in solidarity with the victims of the attack, the worst mass shooting in recent US history. [...]In a post that now appears to have been deleted, Ms Malahoo Forte said: "I strongly condemn #OrlandoNightClubShooting but find it disrespectful of Jamaica's laws to have #RainbowFlag flown here. #MyPersonalView."<sup>19</sup>

#### 5.1.5 In discussing the murder and wounding of over 100 gay, lesbian and trans people at the Orlando Pulse nightclub Antillean Media Group (AMG) looked at the politics of mourning LGBT deaths. They noted that:

'In Jamaica, where officials withheld condemnation for a recent double murder of two homosexuals (presented as a brutish report in the island's press), Prime Minister Andrew Holness was similarly reserved. For him the attack was a medley of terrorism and gun violence, "two scourges which continue to scar the quest for peace and brotherhood among peoples".

'Doubling down on the script, Attorney-General Marlene Malahoo Forte expressed strong condemnation for the Pulse massacre, and equally strong condemnation for the Rainbow Flag, saying that it offended Jamaican laws which she couldn't name.'

'Jamaica's law, in fact, criminalizes sexual acts between men: being gay, as the government's argument goes, is legal. Puzzled, the US Embassy

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<sup>17</sup> The Guardian, Jamaica's first public gay pride event a symbol of change: 'It felt liberating', 10 August 2015 <https://www.theguardian.com/world/2015/aug/10/jamaica-first-gay-pride-celebration-symbol-change> [date accessed 11 January 2017]

<sup>18</sup> The Guardian, Six countries making progress on LGBT rights, 10 February 2016 <https://www.theguardian.com/global-development-professionals-network/2016/feb/10/lgbt-rights-six-countries-progress> [date accessed 11 January 2017]

<sup>19</sup> BBC News, Orlando shooting: Rainbow flag in Jamaica sparks row, 15 June 2016, <http://www.bbc.co.uk/news/world-latin-america-36537088> [date accessed 11 January 2017]

initiated what would become a firestorm of debate and criticism over Malahoo's remarks.'

'Malahoo went on to call for meaningful gun control, as she framed the murders simply as an act of terror. She defended her opposition to the display of the Rainbow Flag, saying "when we ask each other to respect our differences, we should do so in all areas where we differ"—presumably in respect of the differences in rights accorded to LGBT citizens under Jamaican and US laws.'<sup>20</sup>

- 5.1.6 Freedom house noted that: 'As a modest step forward, in 2014 the government added a provision to the Offences Against the Person Act; the amendment criminalizes the production, recording, or distribution of any audio or visual materials that promote violence against any category of persons, including LGBT individuals.'<sup>21</sup>

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## 5.2 Police

- 5.2.1 The Inter- American Commission on Human Rights, 'Report on the Human Rights Situation in Jamaica' dated 10 August 2012 stated that:

'Jamaican law provides police great discretion in detaining individuals; the Offenses Against the Person Act permits a police officer to arrest without a warrant any person found "loitering" between 7 p.m. and 6 a.m. whom the police constable has "good cause to suspect of having committed, or being about to commit any felony" proscribed by the Act. Jamaican laws are also used as a pretext by police to detain men who do not conform to gender roles, and women who have sex with women are also targeted for arrest. There are accounts that the laws are actively enforced against men engaged in homosexual behaviour. Thus, members of the LGBT community face arrest, detention, and prosecution for their sexuality under the law.'<sup>22</sup>

- 5.2.2 The Human Rights Watch report 'Not Safe at Home Violence and Discrimination against LGBT People in Jamaica' dated 21 October 2014 stated that:

'The laws have been used by police to extort money from adults engaged in consensual homosexual sex by public television stations to justify refusal to broadcast public service announcements making positive statements about LGBT persons and by landlords to justify refusal to rent apartments to them. Though those arrested are rarely if ever prosecuted, gay men who are "outed" through arrest risk violence and other abuse by community members. While the law does not directly reference transgender people, transgender women and homosexuals are often conflated. Gender non-

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<sup>20</sup> Antillean Media Group (AMG), The politics of mourning LGBT deaths, 15 June 2016, <http://www.antillean.org/jamaica-malahoo-mourning-lgbt-deaths-876/> [date accessed 11 January 2017]

<sup>21</sup> Freedom House, Freedom in the World 2016, 29 August 2016 <https://freedomhouse.org/report/freedom-world/2016/jamaica> [date accessed 14 December 2016]

<sup>22</sup> Inter- American Commission on Human Rights, Report on the Human Rights Situation in Jamaica, 10 August 2012, <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> [date accessed 14 December 2016]



conforming Jamaicans, especially transgender women and gender non-conforming gay men who are publicly visible, are most likely to suffer violence and discrimination.’

‘In recent years, the police have taken some steps to address homophobic and transphobic violence. In 2011, the Jamaican Constabulary Force launched a Policy on Diversity, developed in consultation with J-FLAG, which requires police to ensure that LGBT people and other vulnerable groups can safely file police reports. The policy establishes a mechanism to monitor police non-compliance, although Human Rights Watch has not been able to ascertain whether any police have been held accountable for non-compliance, despite a formal request for this information.’

‘Nonetheless, police protection remains inadequate, and is among several factors that contribute to the specific vulnerability of LGBT people.’

- 5.2.3 The same source found the following with regards to police failure to act in light of crimes committed against LGBT persons: ‘Human Rights Watch interviewed LGBT people who said that when they tried to report a crime, police made derogatory comments and failed or refused to take a report, even well after the Policy on Diversity was established. The fact that police themselves are sometimes perpetrators of violence and extortion against LGBT people makes LGBT victims even more unlikely to seek police assistance. The report describes incidences where the ‘police failed to intervene, even as attacks were happening’, ‘police failing to arrest suspects or investigate homophobic incidents’, and despite police being instructed to record hate crimes ‘they lack a clear definition of what constitutes such a crime, and documenting these incidents appears to be under-prioritized’.
- 5.2.4 Human Rights Watch also documented instances where the police were the perpetrators:
- ‘Cases of police violence toward LGBT people appear to have decreased in the decade since Human Rights Watch documented such violence in our 2004 report, *Hated to Death*. However, the persistence of even isolated cases is of great concern given the police’s role as a source of protection. At the root of much police abuse appears to be the same intolerance and homophobia found in Jamaican society more broadly’. The report recorded specific incidences of verbal abuse, physical abuse, sexual abuse, and extortion.’<sup>23</sup>
- 5.2.5 The Human Rights First report ‘The World as it Should Be’ Advancing the Human Rights of LGBT People in Jamaica’ updated in July 2015 stated that:
- ‘Members of the Jamaica Constabulary Force (JCF) often contribute to stigmatization and discrimination against LGBT people. Some police use the sodomy law as leverage to extract bribes, threatening to arrest or release the names of members of the LGBT community to the media.’

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<sup>23</sup> Human Rights Watch, *Not Safe at Home – Violence and Discrimination against LGBT people in Jamaica*, 21 October 2014, <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica> [Date accessed: 21 February 2017]

'While most Jamaicans expressed support for the sodomy laws in a 2014 poll, over 80 percent admit that gay men are not treated fairly by the police or justice system. Just under 80 percent of Jamaicans believe the same holds true for lesbians. Jamaican Public Defender Arlene Harrison Henry notes reports of general police inaction in cases of violence or discrimination against LGBT people. Many activists say such inaction is rooted in homophobia among the police force.'

'Jamaica's police force implemented a diversity policy in 2011, which includes sexual orientation as a protected class and directs police to ensure that LGBT people and other groups are able to file police reports. However, it is unclear whether members of the police force are in practice being held accountable for noncompliance with the policy.'

'The prevalence of homophobic attitudes within the police force, combined with the general inefficiency of the justice system, result in an overall lack of investigation into violence or discrimination against LGBT people.'<sup>24</sup>

5.2.6 A December 2015 joint report on 'Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica' reported that:

'It is important to note that in an effort to improve public confidence in the police, in 2011 the Jamaica Constabulary Force issued a Policy on Diversity with the aim to "effectively transform the negative aspects of police culture manifested in the scant regards paid to reports made by members of diverse groups, as it relate to the incidence of crimes committed against them." According to the policy definitions, diverse groups comprise, among others, persons of various sexual orientation. In addition, the police have undergone a number of human rights-related capacity building and sensitization workshops. For example, in September 2015, two-hundred and thirty police officers participated in a two-day training which 'focused on the safety and security of women and girls, persons living with disabilities, marginalised youth, and members of the lesbian, gay, bisexual or Transgendered (LGBT) community.' However, as J-FLAG stresses, "much more work needs to be done to ensure that all Jamaicans are protected and where their rights are infringed, they are treated equally before the law." Negative police attitudes towards LGBT persons persist and as a consequence, many LGBT crime victims do not even attempt to report crimes to the police.'

'[...] perception of a significant number of common Jamaicans is that the police treat LGBT persons worse than heterosexual persons. According to the 2012-2013 Jamaica National Crime Victimization Survey, 46.5% residents in Kingston report that they feel that the police treat homosexuals worse than heterosexuals. The percentages in other parishes are: St Andrew (16.5%), St Thomas (19.1%), St Mary (31.8%), St James (32.3%), Clarendon (28.2%), St Catherine (22.3%) and Trelawney (32.3%).

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<sup>24</sup> Human Rights First, "The World as it Should Be" Advancing the Human Rights of LGBT People in Jamaica, updated July 2015, <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf> [date accessed 10 January 2017]

'A 2015 study entitled the Developmental Cost of Homophobia which was commissioned by JFLAG indicates that a large number of LGBT people did not report the last incident of physical or sexual assault that was perpetrated against them to the police. 30.1% of the persons did not report because they felt the incident was too minor to be reported, while 40.5% did not report because they felt the police would not do anything to address the matter. About 1 in 4 (25.5%) feared a homophobic response from the police, and about 1 in 5 (22.9%) did not report because they felt too ashamed or embarrassed and did not want anyone to know what had happened to them.'<sup>25</sup>

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## 6. Societal treatment and attitudes

### 6.1 Overview

6.1.1 The Human Rights Watch report 'Not Safe at Home Violence and Discrimination against LGBT People in Jamaica' dated 21 October 2014 stated that: 'Families and neighbours often drive LGBT people from their homes and communities; landlords refuse to rent to LGBT persons, denying them housing; health providers stigmatize them when they seek services; and employers arbitrarily fire them.'<sup>26</sup>

6.1.2 A J-FLAG commissioned paper on the National Human Rights Institutions and the Human Rights Situation of LGBT People in Jamaica, dated June 2015 stated that:

'Outside of flagrant acts of violence and intimidation, the culture of homophobia has allowed these acts to continue with impunity. The public perception of homosexuality as "morally wrong" or "against the natural order" has made it difficult for many LGBT persons to live comfortably, especially those in lower strata of society, as indicated. The 2011 National Survey on Attitudes and Perceptions of Jamaicans towards Same- Sex Relationships found that Jamaicans are generally homophobic and some LGBT persons are more at risk than others. It found that anti-gay attitudes and views were most common among, inter alia, people in low income communities and people who had no university education.'

'Jamaicans overwhelmingly support criminalizing homosexuality (85%). One public opinion poll shows 83 percent of Jamaicans find male homosexuality "morally wrong," and 75 percent believe female homosexuality is "morally wrong." Another survey shows 72 percent of Jamaicans "strongly disapproved" of homosexuals running for office, and 91 percent "strongly disapproved" of same-sex marriage.'

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<sup>25</sup> Joint report, Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report, pg 7, December 2015  
[http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JAM/INT\\_CCPR\\_ICO\\_JAM\\_22756\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JAM/INT_CCPR_ICO_JAM_22756_E.pdf) [date accessed 10 January 2017]

<sup>26</sup> Human Rights Watch, Not Safe at Home Violence and Discrimination against LGBT People in Jamaica, 21 October 2014 <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica> [date accessed 14 December 2016]

‘Misperceptions of same-sex attraction as a “choice” or “form of rebellion” are widespread, according to the advocates, and many are surprised to hear gay and lesbian people cannot be attracted to the opposite sex in the same way that heterosexuals cannot be attracted to the same sex. Additionally, advocates believe some Jamaicans perceive homosexuality as illegal, due to a misunderstanding of the buggery law.’

‘The 2014 LAPOP study revealed that 69.1% of Jamaicans strongly disapproved of the rights of homosexuals to run for office and 89% strongly disapproved of gay marriage.’<sup>27</sup>

- 6.1.3 Goldsmiths University news article entitled ‘Gay rights support improves in Jamaica but anti-gay sentiment grows new research suggests’ dated 15 August 2016 noted that:

‘Social psychologist Dr West – an expert in anti-LGBT prejudice in Jamaica - analysed the results of two surveys from 2012 and 2015 of almost 1,900 people, to see how attitudes have changed.’

‘The surveys show that, over the 3-year period, heterosexual Jamaicans reduced their support for the country’s “buggery law” and became more supportive of gay rights. However, they simultaneously became more likely to say they do not trust or like gay people, or that they would threaten, hurt and insult them.’

‘Dr West’s research into changes in attitudes appears in The Journal of Sex Research. He explains: “What should we make of these findings? Taken together my conclusion is that these changes in structural and personal prejudice suggest that heterosexual Jamaicans now respect LGBT Jamaicans more, but like them less.”’<sup>28</sup>

- 6.1.4 Amnesty International’s annual report for 2015/16 noted that: ‘In August, a gay pride celebration was held in Jamaica for the first time. The Minister of Justice called for tolerance during the celebration and expressed his support for the rights of LGBTI people to express themselves peacefully.’<sup>29</sup>

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## 6.2 Incidents of harassment or abuse

- 6.2.1 The Inter- American Commission on Human Rights, ‘Report on the Human Rights Situation in Jamaica’ dated 10 August 2012 stated that:

‘The IACHR has come to understand that discrimination based on sexual orientation, gender identity, and gender expression is widespread throughout Jamaica, and that discrimination against those in the lesbian, gay, bisexual, trans, and intersex (LGBTI) communities is entrenched in Jamaican State

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<sup>27</sup> Glenroy Murray, J-FLAG commissioned a paper on the National Human Rights Institutions and the Human Rights Situation of LGBT People in Jamaica, June 2015, <http://jflag.org/wp-content/uploads/2013/11/NHRI-Paper.pdf> [date accessed 9 January 2017]

<sup>28</sup> Goldsmiths University of London, Gay rights support improves in Jamaica but anti-gay sentiment grows, new research suggests, 15 August 2016, <http://www.gold.ac.uk/news/jamaica-three-years-later/> [date accessed 4 January 2017]

<sup>29</sup> Amnesty International, Annual Report- Jamaica 2015/16, 24 February 2016 <https://www.amnesty.org/en/countries/americas/jamaica/report-jamaica/> [date accessed 14 December 2016]

institutions. Those who are not heterosexual or cisgender face political and legal stigmatization, police violence, an inability to access the justice system, as well as intimidation, violence, and pressure in their homes and communities.<sup>30</sup>

6.2.2 The October 2014 Human Rights Watch report 'Not Safe at Home Violence and Discrimination against LGBT People in Jamaica' stated that:

'Between 2009 and 2012, J-FLAG, a Jamaican LGBT rights organization, recorded 231 incidents of attacks against LGBT people, including home invasions, physical assaults, and mob attacks.'

'LGBT Jamaicans, especially those who are poor and unable to live in safer, more affluent areas, are particularly vulnerable to violence. Many live in constant fear. They are taunted; threatened; fired from their jobs, thrown out of their homes; beaten, stoned, raped, and even killed.'

'Physical and sexual violence, including severe beatings and even murder, are part of the lived reality of many LGBT people in Jamaica. The level of brutality leads many to fear what could happen if their sexual orientation or gender identity is disclosed. [...] In many cases, perpetrators appear to have been private actors who felt that they had the moral authority to "rid the community" of LGBT people and had no fear of arrest from the authorities [...] Some of the individuals we interviewed had more than one experience of physical violence. These reported acts of violence included rape; being chopped with a machete; being choked; being stabbed with a knife; being shot with a gun; being hit with boards, pipes, sticks, chairs, or brooms; being attacked by groups ranging from 5 to 40 individuals; and being slapped in the face with hands or with guns. [...] Among the various types of physical abuses endured, interviewees identified two forms- mob attacks and arson- as notable for being both extreme and targeted at LGBT people. [...] At least 48 physical assaults that interviewees described to Human Rights Watch were accompanied by slurs that referred to the victim's perceived or real sexual orientation or gender identity.'

'Sexual assaults on LGBT people are frequently accompanied by verbal abuse that suggests the assaults are motivated by homophobia and justified by the perpetrators as an attempt to "convert" the victims to heterosexuality.'<sup>31</sup>

6.2.3 Amnesty International's annual report noted that: 'Between January and July [2015], the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG) received 47 reports of human rights violations against LGBTI people.'<sup>32</sup>

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<sup>30</sup> Inter- American Commission on Human Rights, Report on the Human Rights Situation in Jamaica, 10 August 2012, <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> [date accessed 14 December 2016]

<sup>31</sup> Human Rights Watch, Not Safe at Home Violence and Discrimination against LGBT People in Jamaica, 21 October 2014 <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica> [date accessed 14 December 2016]

<sup>32</sup> Amnesty International, Annual Report- Jamaica 2015/16, 24 February 2016 <https://www.amnesty.org/en/countries/americas/jamaica/report-jamaica/> [date accessed 14 December 2016]

- 6.2.4 The USSD report for 2015 stated that ‘The NGO J-FLAG reported that during the year [2015] approximately 100 LGBTI persons were subjected to discrimination, harassment, violence and other forms of abuse, including 19 cases of physical assault, 34 of verbal assault, 22 involving threat and intimidation, and four mob attacks.’<sup>33</sup>
- 6.2.5 Freedom House stated that ‘Harassment of and violence against LGBT (lesbian, gay, bisexual, and transgender) people remains a major concern and is frequently ignored by the police.’<sup>34</sup>

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### 6.3 Mob violence

- 6.3.1 The Organization of American States’ Inter-American Commission on Human Rights (IACHR) recorded in its annual report covering 2014 that:
- ‘In 2012, an angry mob broke into a house to attack three gay men who were living together in Jones Town, Kingston. Police officers who arrived at the scene were also confronted by villagers for trying to protect the men.’
- ‘Another resounding case took place in 2012 at the Jamaica’s University of Technology (UTech), when a gay student was chased by mob of male and female students through the university campus. The victim was able to reach the security office, while the mob kept screaming outside. A video shot at the scene shows how at least two guards, instead of protecting the student, went on to slap, kick and punch him in view of the crowd sneaking through the windows. A few months later, the guards were subsequently freed by a Court after the student decided to no longer pursue the case. By mid-2013 mob attacks in Jamaica soared to worrying levels. According to the information received by the IACHR, on 1 August [2014], two men inside a patrol car were perceived as gay and a crowd quickly gathered and started harassing the men. Police officers had to disperse the crowd using warning shots and pepper spray. On the very same day, police forces had to be called on to rescue two gay men from another irate crowd, which claimed the men “were engaging in an illegal activity in a house” in St. Catherine. Prior to the police arrival, one of the accused men was attacked by an occupant of the house.’
- ‘[T]he IACHR received information that on August 10 [2013], police personnel had to rescue a trans woman in Portmore, St Catherine, after an angry mob who had seen her in the community threatened to flog her. On 22 August [2013], another irate mob barricaded five gay men inside of their home in Manchester. The men were reportedly trapped until police arrived and escorted them to safety, to the applause of enraged community members. Additionally, on 26 August [2013], local media reported that two men had to seek refuge after being involved in a motor vehicle accident when angry residents said they appeared to be gay. Police forces had to escort the men out of the police station and away from the angry mob that

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<sup>33</sup> United States Department of State, 2015 Country Reports on Human Rights Practices - Jamaica, 13 April 2016 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253025> [date accessed 14 December 2016]

<sup>34</sup> Freedom House, Freedom in the World 2016, 29 August 2016 <https://freedomhouse.org/report/freedom-world/2016/jamaica> [date accessed 14 December 2016]

had gathered outside the premises. Two months later, a mob firebombed a house in which several gay men were living in Porto Bello, St James.’

- 6.3.2 In response to this violence, the IACHR formally requested the Jamaican State to provide specific information on the measures adopted in response to the ongoing situation and to report on any measures or policies that had been adopted to prevent further acts of violence against LGTB persons, or those perceived as such. The government replied expressing that:

‘[I]t is difficult to investigate mob killings or attacks given that a mob attack often involves large numbers of persons. It is therefore challenging in those circumstances to determine which persons were actively involved and, in the case of a death, which person or persons landed the fatal blow. In cases of mob attacks, it is also challenging to find witnesses who are willing to give evidence. [In Jamaica] [t]here is no legislation which specifically addresses mob attacks against LGBT persons or those perceived as such.’<sup>35</sup>

- 6.3.3 Human Rights First report ‘The World as it Should Be’ Advancing the Human Rights of LGBT People in Jamaica’ updated July 2015 noted that:

‘In 2013, teenager Dwayne Jones was brutally murdered after attending a party dressed in feminine attire. He was stabbed, beaten, shot, and run over by a car by a violent mob. The case attracted international attention and outrage. At the release of the 2013 U.S. Department of State Human Rights Country Reports, then-Acting Assistant Secretary for Democracy, Human Rights, and Labor Uzra Zeya cited the brutal murder of Dwayne Jones as an example of the egregious global trend of “troubling acts of violence against LGBT persons”. Despite outrage at the national and international level, the case remains unsolved.’

‘The co-founder of J-FLAG, Brian Williamson, was murdered in 2004. Well-known in Jamaica as an elder statesman within the LGBT community, Williamson was found in his home with multiple stab wounds to his neck and face. Police investigated the death primarily as a burglary despite the jubilant crowd at the crime scene shouting homophobic expressions. The murderer was ultimately arrested and sentenced to life in prison.’

‘A U.S. official in Jamaica notes that mob violence is a severe problem, particularly as it affects members of the LGBT community. He described mob violence as an expression of a general lack of faith in the Jamaican justice system. Indeed, the U.S. Department of State documents an “overburdened, under resourced and ineffective judicial system” as one of Jamaica’s principal challenges.’<sup>36</sup>

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<sup>35</sup> Organization of American States, Inter-American Commission on Human Rights (IACHR), Annual Report 2014, 7 May 2015, Chapter V. Paras 176. <http://www.oas.org/en/iachr/docs/annual/2014/TOC.asp> [date accessed 10 January 2017]

<sup>36</sup> Human Rights First, ‘The World as it Should Be’ Advancing the Human Rights of LGBT People in Jamaica, updated July 2015, <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf> [date accessed 10 January 2017]

## 6.4 Corrective rape

### 6.4.1 The Inter-American Commission on Human Rights (IACHR) 2014 annual report stated that:

'[...] many sources indicate that "corrective" rape in Jamaica is an issue of concern. To name a few of the reported incidents, in 2007 a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days and raped repeatedly day after day by different religious men in the attempt "to make her take men" and "live as God instructed." In 2008, four more cases were reported. The women refused to report the matter to the police out of fear of further victimization. At least another three episodes of "corrective" rape were reported in 2009. In 2010, a lesbian woman was gang-raped by four men from her community who had complained about her 'butch' or 'manly' attire. After she was raped, the rapists cut her with a knife 'so she could better take men.' A few days after that episode, a known friend of the first woman was driven away at knifepoint, brutally raped and then dumped half-naked. The women refused to go to the police because of the perceived ineffectual nature of their response. It is noteworthy, in this respect, that there exists a precedent in a foreign court granting asylum to a Jamaican lesbian taking into account the high risks of suffering "corrective" rape she would be exposed to if returned to Jamaica.'<sup>37</sup>

### 6.4.2 Human Dignity Trust (UK) article titled 'Jamaican activist Angeline Jackson brings attention to rapes targeting lesbians' dated 27 April 2015 noted that:

'In April 2015 the Human Dignity Trust reported that when Angeline Jackson and a friend were ambushed at gunpoint and sexually assaulted on a wooded trail outside the Jamaican capital in 2009, police initially seemed less concerned about the attack than the fact she is a lesbian. Jackson, a victim of a targeted sexual assault when she was 19, now directs the only registered lesbian and bisexual women's organisation in Jamaica and is determined to help others recover from sexual crimes targeting female homosexuals, including so-called "corrective rapes" intended to force them into becoming heterosexual or punish them for not fitting societal norms.'<sup>38</sup>

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## 6.5 Homelessness

### 6.5.1 The Human Rights Watch October 2014 report 'Not Safe at Home Violence and Discrimination against LGBT People in Jamaica' stated that:

'Many LGBT Jamaicans become effectively homeless, forced to flee their homes and sometimes the country, and denied full citizenship rights. Among the most vulnerable are dozens of gay and transgender Jamaican children and young adults who have been rejected by their families and are living on

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<sup>37</sup> Organization of American States, Inter-American Commission on Human Rights (IACHR), Annual Report 2014, 7 May 2015, Chapter V. Paras 172 <http://www.oas.org/en/iachr/docs/annual/2014/TOC.asp> [date accessed 10 January 2017]

<sup>38</sup> Human Dignity Trust (UK), Jamaican activist Angeline Jackson brings attention to rapes targeting lesbians, 27 April 2015 <http://www.humandignitytrust.org/pages/NEWS/Persecution%20Alert?NewsArticleID=391> [date accessed 10 January 2017]



the streets, where they face violence and harassment by police and the public.<sup>39</sup>

6.5.2 Amnesty International's annual report for 2015/16 noted that 'Homelessness and displacement of LGBTI youths remained a concern. Young people pushed out of their homes because of their sexual orientation or gender identity continued to live in storm drains and abandoned buildings. Local NGOs supported homeless LGBTI youths, while the state did little to help. By mid-year, J-FLAG had provided social and crisis services to 329 LGBTI people and continued to receive requests for advice from LGBTI Jamaicans planning to seek asylum in other countries.'<sup>40</sup>

6.5.3 The USSD report for 2015 noted that:

'According to J-FLAG, an estimated 100 LGBTI persons reported being forced to flee their homes and rendered homeless over the past six years; another group of approximately 30 individuals remained homeless in Kingston. Through J-FLAG and other local NGOs, LGBTI persons were able to address these issues in the media and public forums and advocate for their human rights. Several high-ranking political leaders expressed support for safeguarding human rights of LGBTI persons.'<sup>41</sup>

6.5.4 Vice published an article titled 'The Challenges of Running a Queer Homeless Shelter in Jamaica' dated 20 December 2016 which stated that:

'[...] in January this year [2016] the Jamaica Observer revealed a 26 percent rise in homelessness over the past three years. The problem is particularly prevalent amongst the country's LGBTQ community, who comprise at least 40 percent of the overall homeless youth population.'

'According to Dane Lewis, director of J-Flag, one of the greatest barriers to providing shelter for the LGBTQ homeless youth is a lack of funding. NGOs seeking to alleviate the burdens of the queer homeless youth were, and still are, locked in ongoing negotiations with both the government and international agencies for financial support that would help them address the issue on the ground. They find themselves consistently overstretched and unable to provide anything more than stop-gap support.'

'The National Anti-Discrimination Alliance (NADA) is a Jamaican organisation "committed to protecting the rights and freedoms of all people regardless of social or cultural biases." They have provided LGBTQ-friendly safe houses and private shelters for the homeless since 2014. NADA is a small-scale operation, relying largely on the kindness of volunteers willing to open their homes for those in need. When that's not an option, the group will pool their resources and rent a residential property which can be run as a safe house. The shelters can only take on a few guests at a time

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<sup>39</sup> Human Rights Watch, Not Safe at Home Violence and Discrimination against LGBT People in Jamaica, 21 October 2014 <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica> [date accessed 14 December 2016]

<sup>40</sup> Amnesty International, Annual Report- Jamaica 2015/16, 24 February 2016 <https://www.amnesty.org/en/countries/americas/jamaica/report-jamaica/> [date accessed 14 December 2016]

<sup>41</sup> United States Department of State, 2015 Country Reports on Human Rights Practices - Jamaica, 13 April 2016 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253025> [date accessed 14 December 2016]

and operate on a word of mouth basis, but nonetheless NADA represents a small but significant victory in the struggle to provide shelter to displaced members of Jamaica's LGBTQ community.'

'Andrew Higgins, founder of NADA, believes that they have so far been able to avoid becoming a target of anti-LGBTQ groups by operating as a "non-discriminatory" organisation rather than a "pro-LGBTQ" organisation.'

'The fact still stands, though, that NADA's shelters are primarily aimed at people who are newly homeless, rather than those who have been living without shelter for several years. With a high occurrence of HIV and other medical problems within the long-term LGBTQ homeless community, as well as a high rate of unemployment and training, any shelter will have to provide more than just a roof in order to see the long-term homeless youth rejoin broader society. Therefore, for shelters like NADA's with limited funding, the best strategy is to focus energies on those who have just become homeless in the hope that they can prevent them from becoming homeless in the long-term.'<sup>42</sup>

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## 6.6 Employment

### 6.6.1 Human Rights First report 'The World as it Should Be' Advancing the Human Rights of LGBT People in Jamaica' updated July 2015 noted that:

'Jamaica's "Staff Orders for the Public Service" - which outline the operational procedures for the Jamaican civil service do explicitly include sexual orientation as a protected category for those in public service. However, similar protections for those working in the private sector are nonexistent, and employment discrimination continues to be a significant issue for the LGBT community.'<sup>43</sup>

### 6.6.2 In correspondence with the Immigration and Refugee Board of Canada, a Professor of anthropology at the City University of New York, who specialises in gender, sexuality and human rights studies, and has conducted research on Jamaica, stated that while the country has a high unemployment rate in general, members of sexual minorities who live in the open are "basically unemployable".<sup>44</sup>

### 6.6.3 The council on Hemispheric affairs noted that: 'Further exacerbating the homophobia is the fact that it is also legal in Jamaica to fire LGBT people because of their gender identity or sexual orientation.'<sup>45</sup>

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<sup>42</sup> Vice, The Challenges of Running a Queer Homeless Shelter in Jamaica, 20 December 2016, [https://www.vice.com/en\\_nz/article/the-struggle-for-queer-shelters-in-jamaica](https://www.vice.com/en_nz/article/the-struggle-for-queer-shelters-in-jamaica) [date accessed 10 January 2017]

<sup>43</sup> Human Rights First, The World as it Should Be" Advancing the Human Rights of LGBT People in Jamaica, updated July 2015, <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf> [date accessed 10 January 2017]

<sup>44</sup> Canada: Immigration and Refugee Board of Canada, Jamaica: Treatment of sexual minorities, including legislation, state protection and support services (2013-December 2015), 12 February 2016, <http://www.refworld.org/docid/56d7fdfe4.html> [date accessed 10 January 2017]

<sup>45</sup> Council on Hemispheric affairs, Jamaica's Homophobia Forced 'Out of the Closet' by the Rainbow Flag, 21 June 2016, <http://www.coha.org/jamaicas-homophobia-forced-out-of-the-closet-by-the-rainbow-flag/> [date accessed 9 January 2017]

## 6.7 Healthcare

### 6.7.1 Human Rights First's report (updated July 2015) 'The World as it Should Be: Advancing the Human Rights of LGBT People in Jamaica' noted that:

'Activists providing direct health services to the LGBT population recounted various anecdotes of healthcare workers' mistreatment of LGBT people based on sexual orientation and/or gender identity. They note that while HIV medicine is available, many in the LGBT community are reluctant to access this essential treatment because of prior experiences of discrimination, ridicule, and/or rejection in healthcare centres. A lack of privacy and anonymity for those seeking treatment, particularly in small rural communities, is another discouraging factor to LGBT people seeking treatment.'<sup>46</sup>

### 6.7.2 A December 2015 report on 'Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica' noted that:

'The 2015 survey of 316 LGBT Jamaicans found that "the experience with healthcare service providers was varied. The majority of the respondents (52.5%) reported being forced to undergo seemingly unnecessary medical or psychological testing. A third (32.2%) also experienced inappropriate curiosity regarding their identity. Approximately 17% felt they had not received equal treatment, and 15% declined treatment because they felt fear or discrimination or intolerance, and 15% also felt the need to change their general practitioner or specialist because of negative reaction."<sup>47</sup>

### 6.7.3 The USSD report for 2015 noted:

'The Ministry of Health and J-FLAG trained more than 200 healthcare workers in 2014 and 2015 to sensitize them to LGBTI patients. Although the country has universal health care, members of the LGBTI community relied mainly on the Jamaica AIDS Support for Life clinic, claiming that the staff in the government's health system did not understand their needs and was unwelcoming. Training programs such as those conducted by J-FLAG, public advocacy by other NGOs and international donors, and increased focus by the government on the public health issue of HIV/AIDS increased the number of LGBTI persons accessing public-sector health care facilities.'

'The 2013 HIV and AIDS legal assessment for Jamaica shows significant improvement in the nation's response to HIV, including a new governance structure of the National HIV/Sexually Transmitted Infection program, which has been integrated within the National Family Planning Board under the new Sexual and Reproductive Health Authority for Jamaica. There has been a dramatic reduction of HIV prevalence among sex workers. The country is close to eliminating the transmission of HIV and AIDS between mother and

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<sup>46</sup> Human Rights First, "The World as it Should Be" Advancing the Human Rights of LGBT People in Jamaica, updated July 2015, <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf> [date accessed 10 January 2017]

<sup>47</sup> Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report, pg 7, December 2015 [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JAM/INT\\_CCPR\\_ICO\\_JAM\\_22756\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JAM/INT_CCPR_ICO_JAM_22756_E.pdf) [date accessed 10 January 2017]

child. The country adopted the National HIV/AIDS Workplace Policy prohibiting HIV-related discrimination in the workplace, and increased public awareness and engagement on HIV for various vulnerable populations. Criminalization of private, consensual same-sex acts, sex work, and drug use continued to exacerbate stigma and discrimination against the most vulnerable populations and impede their access to health information and services. A high-level political declaration in 2011 to address stigma and discrimination has not been translated into concrete legal or policy reforms.<sup>48</sup>

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## 6.8 Media

- 6.8.1 The J-FLAG annual report covering 2014 reported that there was a tremendous increase in attention on LGBT issues in the media in 2014. There were several editorials on LGBT issues in the two leading print media, many commentaries written and numerous current affairs programmes dealing with LGBT issues. Notably, there were two television programmes on the leading current affairs programmes Impact and All Angles that were specifically geared to issues related to transgender people. This heightened interest resulted in many media engagements by J-FLAG. Notably, the Executive Director, Dane Lewis, published an article in the Jamaica Gleaner that essentially “clarified the J-FLAG agenda” This was necessary in light of the preconceptions about the organisation that were held and presented in the media by opponents of a nefarious gay lobby that is insistent on promoting a “gay agenda” that will be to the detriment of the nation, families especially.<sup>49</sup>
- 6.8.2 The Organization of American States’ Inter-American Commission on Human Rights (IACHR) noted in its annual report covering 2014 that:
- ‘Public policy campaigns, which seek to promote tolerance, have faced backlash from media channels. The Office of the Special Rapporteur for Freedom of Expression was informed of the decision by television channels CVMTV and Television Jamaica not to authorize dissemination of the commercial “Love & Respect,” which apparently seeks to promote tolerance of diverse sexual orientations. The Broadcasting Commission found no legal reason not to broadcast the advertisement.’
- ‘Additionally, the Office of the Special Rapporteur expresses its concern over the promotion in some media outlets of outwardly discriminatory and homophobic messages that could incite violence against members of the LGBT community, especially when those messages come from shapers of public opinion. According to the information received, during 2013 some media systematically published articles that could incite violence against

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<sup>48</sup> United States Department of State, 2015 Country Reports on Human Rights Practices - Jamaica, 13 April 2016 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253025> [date accessed 14 December 2016]

<sup>49</sup> Jamaica Forum for Lesbians, All-Sexuals and Gays (J-Flag). Engaging communities Transforming lives: Annual Report 2014, Media, Page 28. <http://jflag.org/wp-content/uploads/2014/08/AnnualReport-JFLAG.pdf> [date accessed 11 January 2017]

LGBT individuals, by disseminating messages that encourage hatred against the members of that community.’

‘Caribbean Vulnerable Communities (“CVC”) has noted a lack of balance and input from the State aimed at providing information in defence of human rights and human rights defenders as well as providing public education to counter some of the homophobic and divisive demonizing rhetoric. The State’s lack of input in this regard does not only negatively affect the national HIV response or LGBT rights, but it is a regional impact that has led to the Caribbean Community (“CARICOM”) questioning its provision of funding for education for sexual and reproductive rights.’<sup>50</sup>

- 6.8.3 Human Rights First’s report (updated July 2015) argued that the media also strongly influences the debate around the rights of LGBT people.

‘Most activists Human Rights First spoke to said that The Jamaica Observer, one of the country’s two most prominent newspapers, is reflective of homophobic attitudes in Jamaica. In turn, many described the Jamaica Gleaner as a news outlet that provides more balanced reporting on issues related to the LGBT population.’<sup>51</sup> They added that Human Rights Watch had concluded, by analyzing political cartoons, the Jamaica Observer and other newspapers produce cartoons that stereotype, ridicule, foment hate against, and demonize LGBT people<sup>52</sup>.

- 6.8.4 The Council on Hemispheric Affairs article on ‘Jamaica’s Homophobia Forced ‘Out of the Closet’ by the Rainbow Flag’ dated 21 June 2016 stated that: ‘[...] broadcasting companies have refused to air public service announcements that encourage residents to respect LGBT Jamaicans because the announcements were encouraging homosexuality and were therefore a violation of the “buggery”.’<sup>53</sup>

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<sup>50</sup> Organization of American States, Inter-American Commission on Human Rights (IACHR), Annual Report 2014, 7 May 2015, Chapter V. Paras 182-184 and Paras 201-203.

<http://www.oas.org/en/iachr/docs/annual/2014/TOC.asp> [date accessed 11 January 2017]

<sup>51</sup> Human Rights First, The World as it Should Be” Advancing the Human Rights of LGBT People in Jamaica, updated July 2015, <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf> [date accessed 10 January 2017]

<sup>52</sup> Human Rights First, The World as it Should Be” Advancing the Human Rights of LGBT People in Jamaica, updated July 2015, <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf> [date accessed 10 January 2017]

<sup>53</sup> Council on Hemispheric Affairs, Jamaica’s Homophobia Forced ‘Out of the Closet’ by the Rainbow Flag, 21 June 2016 <http://www.coha.org/jamaicas-homophobia-forced-out-of-the-closet-by-the-rainbow-flag/> [date accessed 11 January 2017]

# Version control and contacts

## Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then [email the Country Policy and Information Team](#).

If you notice any formatting errors in this note (broken links, spelling mistakes and so on) or have any comments about the layout or navigability, you can [email the Guidance, Rules and Forms Team](#).

## Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **23 February 2017**

## Changes from last version of this note

Update of country information and corresponding refresh of policy guidance.

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