

WRITTEN SUBMISSION TO THE FOLLOW –UP OF THE IACHR REPORT ON THE HUMAN RIGHTS
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PREPARED AND SUBMITTED BY

QUALITY OF CITIZENSHIP JAMAICA

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Excellencies,

As the only registered organization in Jamaica that focuses exclusively on advocating for the human rights of lesbian, bisexual and trans women, Quality of Citizenship Jamaica (QCJ) would like to thank the Inter-American Commission on Human Rights for this opportunity to discuss the status of the Jamaican Government's implementation of the recommendations in the 2012 IACHR report on Jamaica. We would also like to express appreciation to our partner organization, AIDS-Free World, for making our attendance possible.

Jamaica's 1864 British colonially imposed Offences Against the Person Act (OAPA) criminalizes private same-gender intimacy between men.¹ However, women who have sex with women, and trans* individuals are still vulnerable to the homophobia, lesbophobia, biphobia and transphobia which are given license by the statute. In an ongoing online research which targets lesbian, bisexual and trans* women, QCJ has found that 16% of individuals experienced workplace and hiring discrimination, 36% have faced discrimination from their community, 25% of the respondents have been threatened with physical violence and approximately 24% threatened with sexual violence.²

POLICE INACTION AND JAMAICAN LAW

Even more egregious is the fact that police are reluctant to investigate crimes against LGBTI people, as the Commission noted in paragraph 271 of its report.

The following incident is emblematic of police bias against non-heterosexual Jamaicans:

Keshema Tulloch, a masculine identified lesbian, was frequently harassed and attacked because of her gender identity and expression and as a result she carried a knife for her protection. In October, 2013 Keshema was at her vending stall in the popular Half-Way-Tree area of Kingston where she was not only verbally assaulted with anti-lesbian slurs but also physically attacked by a man while a police officer stood nearby. At no time during this attack did the officer intervene and so in self-defense, Keshema drew her knife. The police officer then shot her twice, once when she was on the ground. While in hospital recovering, Keshema was arrested and charged by the officer for assault occasioning bodily harm, even though her attacker was not wounded, neither was he charged for instigating the altercation.³ Various organizations decried the action of the officer and have appealed to the police oversight body, the Independent Commission of

¹ Sections 76, 77 and 79 of the OAPA.

² Research findings held by QCJ.

³ Brown, D. (2013, October 25). *Lesbian Harassed And Then Shot by Jamaican Police*. Minority-Insight. Retrieved from <http://www.minority-insight.org>

Inquiry (INDECOM) to investigate the matter; to date there has been no indication that INDECOM will investigate.⁴

LBT women in Jamaica remain vulnerable to assaults because of our sexual orientation, gender identity and expression. This fact is illustrated in the following incidents:

- Laura, a trans* woman endured years of verbal assaults because for her gender identity and expression. She has been called a “batty-man” and “she-male” and this derogatory speech escalated to physical violence when she was “chased through Half Way Tree by a group of men” in May, 2004. She has also received numerous death threats from persons in her community. She faces unemployment due to being outed to prospective employers and the very real problem of having her academic documents still in her former name and gender.⁵
- Khanique is a lesbian, who is more masculine in appearance. In April 2013 she received threats of physical violence from two males approximately 13-15 years old, who accosted her one evening on her way home. They said ‘where wi come from dem kill battyman and sodomite’ (where we come from they kill gays and lesbians). The youngsters also threatened her with sexual violence saying, “is a real man yuh waan f*** yuh” (It is a real man you want to f*** you), “is a good f*** yuh want”(it is a good f*** you want). The situation could have escalated as one of the males grabbed her and said, “yuh nuh hear big man a talk to yuh” (do you not hear a big man speaking to you). Khanique however managed to escape from his grasp and walked away. She also walked home using a new route so her attackers would not know what her regular route was in case they planned another assault. Like many lesbian, bisexual and trans* women victims of such attacks, Khanique, opted not to report this incident to the police as she did not believe the matter would have been taken seriously.
- Ana* (name changed upon request) and her partner, decided to visit the popular relaxation spot Devon House in Kingston in June 2012. While on their way they were verbally harassed by a male in his 30’s who threatened, “hey lesbian gyal is a cock unno want, cock to change unno” (lesbians you need to have sex with a man, that’s what will change you), Anna and her partner did not report the incident to the authorities as they thought it would not be addressed by the police officers.

⁴ Quality of Citizenship Jamaica, Caribbean Alliance for Equality and Movement to End Police Killings all submitted letters to INDECOM.

⁵ Records kept with QCJ

- In June 2009, Angeline and her friend, both lesbians, were lured by a self-identified bisexual to Spanish Town, through a meeting on a Caribbean LGBT website. They were robbed at gunpoint by two men. Angeline was sexually assaulted and her friend raped. Unlike many lesbians who encountered similar experiences, Angeline decided to report the matter to the police.

Angeline first attempted to notify the Centre for Investigation of Sexual Offences and Child Abuse (CISOCA) unit in St. Ann's Bay, St. Ann. However, Angeline was told by officers there to, "leave this lifestyle and go back to church". Angeline then took the matter to the CISOCA unit in Spanish Town.⁶ Upon a successful ID parade, the matter was taken to the country's gun court where the identified male was sentenced to 25 years; the sentence was however overturned on appeal.⁷

There is strong indication that what Angeline's friend experienced was a case of "corrective rape" where heterosexual men rape lesbian and bisexual women to "make them straight." There have been reports of three other victims of similar types of incidents. Despite the heinous nature of these attacks, as highlighted by the Commission in paragraph 269, there is a no legislation that would designate them as hate crimes.

ACCESS TO JUSTICE

QCJ acknowledges that there have been positive changes in sections of the Jamaica Constabulary Force. This is no doubt as a result of the stated policy of non-discrimination in policing, which the Commissioner of Police implemented in 2011.⁸ However, it must be pointed out that there is still need for vast improvement in how the police deal with and respond to attacks against lesbian, bisexual women and trans*persons; much training needs to be done in the area of gender identity and how to address trans*persons, using their preferred pronouns and names. The challenge with such sensitivity training will be maneuvering around the legal framework, particularly the new Charter which only recognizes two genders and makes no provision for trans* persons. Indeed, without serious reform, the entire LGBT community will continue to feel as though we have limited or no access to justice.

⁶ Records kept with QCJ

⁷ R v Ronique Raymond. [2012] JMCA Crim 6. Retrieved from [http://www.courtsofappeal.gov.jm/sites/default/files/judgments/Raymond%20\(Ronique\)%20v%20R.pdf](http://www.courtsofappeal.gov.jm/sites/default/files/judgments/Raymond%20(Ronique)%20v%20R.pdf)

⁸ <http://www.acb.gov.jm/pdf/JCF%20Ethics%20and%20Integrity%20Policy%20-%20Final.pdf>

We have also received reports of instances where lesbians remain in abusive relationships with their female partners, as they believe they would not be protected by the law. This is because section 18 of the 2011 Jamaican Charter of Fundamental Rights and Freedoms denies the recognition of non-heterosexual relationships. There is therefore limited protection for lesbian couples under the country's Domestic Violence Act. Lesbians also rationalize that even if such protections were possible the police would not carry out their duties to protect them because of the climate of homophobia and lesbophobia.

RELIGION

In the lead up to the general election in December 2011, during a televised leadership debate the leaders of both political parties were asked, "What do you think of former Prime Minister Golding's statement that homosexuals were not welcome in his cabinet and do you share his sentiments?"⁹ Leader of the then opposition party, and now Prime Minister Portia Simpson Miller, stated, "I do not support the position of the former Prime Minister because people should be appointed based on their ability...No one should be discriminated against based on their sexual orientation"¹⁰. In the weeks following, the response from the Jamaica Labour Party Platform included statements from Daryl Vaz (current MP for Western Portland) that, "God made Adam and Eve and not Adam and Steve"¹¹, Clive Mullings (past MP for West Central St. James) who asserted that a move to repeal or review the buggery law would bring down God's wrath on Jamaica while clutching a Bible. Such religious fear mongering is notoriously effective in our deeply religious society.

The religious platform continues, largely, to oppose any review or repeal of the buggery law; in June 2013, Rev. Lenworth Anglin declared at a public crusade put on by the Errol Rattray Evangelistic Association, "some of us are prepared to die in an effort to ensure that the gay lifestyle is not accepted in Jamaica."¹² Popular cleric and former Prime Ministerial advisor, Rev. Al Miller stated that, "scores of concerned pastors and leaders" would "mobilise and resist any attempts to tamper with the Constitution as it relates to the buggery law".¹³ Head of the Jamaica Coalition for a Healthy Society, Dr. Wayne West, in agreeing with Rev. Anglin that "the church has numbers", declared that the church could successfully argue against any repeal of

⁹ Korten, T. (2012, October 2). *Jamaica's Portia Simpson-Miller and Gay Rights*. Public Radio International. Retrieved from <http://www.pri.org/>

¹⁰ Kortenm T, (2012, October 2).

¹¹ Virtue, E. (2011, December 23). *Vaz says constituents stand firm against homosexuality*. The Jamaica Gleaner. Retrieved from <http://jamaica-gleaner.com>

¹² Thaffe, N. (2013, June 4). *Church won't bow to gays - Clergyman calls for religious leaders to stand firm against homosexuality*. The Jamaica Gleaner. Retrieved from <http://jamaica-gleaner.com/>

¹³ Thaffe, N. (2013, June 4).

the buggery law. He said further, "When a country makes its laws, laws are framed within some sort of philosophy and I think that the Christian theistic world view is the best performing law. I think the Church can certainly argue that the Judeo-Christian world view is better than the secular world view."¹⁴ So far it would seem the religious platform that is determining the agenda for human rights of LGBT Jamaicans. True constructive discussion around LGBT rights could have begun already were the Government not at the mercy of the religious majority.

MEDIA

Sectors of the Jamaican media have repeatedly published inflammatory cartoons¹⁵, anti-gay stories and unauthorized photos¹⁶ of same-sex marriages of LGBT Jamaicans living outside of the island,¹⁷ subjecting them and their families to possible dangerous situations and death threats.

LB WOMEN ACCESS TO HIV AND AIDS INTERVENTIONS

Despite the fact that there is evidence HIV can be transmitted between WSWs,¹⁸ there are no specific interventions, programs or outreach to lesbian and bisexual (LB) women from the organizations that work on the national HIV and AIDS response. This is quite possibly due to the perception that LB women have little or no risk of infection. However, as the Commission points out in paragraph 300, and as outlined in Angeline's personal story shared above, the increased risk of rape of LB women heightens our vulnerability to contracting the virus. Please note that despite this risk, there has been no research to date into the actual levels of HIV within the LB population, nor does the National HIV Program disaggregate data based on the sexual orientation of women. Our ongoing research has found that approximately 67% of these women had not tested for HIV in the past six months.

GOVERNMENT INACTION ON THE ANTI-SODOMY LAW

¹⁴ Thaffe, N. (2013, June 6). 'We have the numbers' - Church leaders confident enough religious Jamaicans in island to prevent change to buggery law. The Jamaica Gleaner. Retrieved from <http://jamaica-gleaner.com/>

¹⁵ <http://anniepaulose.files.wordpress.com/2011/07/gaysed-cartoon-wedn-13-july.jpg>

¹⁶ (2012, June 25). *Jamaican lesbian weds*. The Jamaica Observer. Retrieved from <http://www.jamaicaobserver.com>

¹⁷ (2012, January 07). *Jamaican gay activist marries man in Canada*. The Jamaica Observer. Retrieved from <http://www.jamaicaobserver.com>

¹⁸ Netburn, W. (2014, March 13). *Women can get HIV from other women during sex, CDC reports*. The Los Angeles Times. Retrieved from <http://www.latimes.com/>

Despite multiple promises to call for a Parliamentary Conscience Vote to review the country's anti-sodomy law, the Government has failed to act.¹⁹ Instead, the Government has sought to defend the archaic statute in a case which will be heard in November of this year and in which the IACHR will be providing evidence.²⁰ The IACHR's recommended repeal of the laws criminalizing homosexual conduct therefore remains unmet.

The Government has also ignored the Commission's recommendation for government officials to take steps to defend sexual minorities. Notably, the only statement from the Government on the public mob-murder of 16 year-old trans* youth Dwayne "Gully Queen" Jones in July 2013 was a release by the Minister of Justice in which he failed to specifically acknowledge that this was a deliberate LGBT hate-crime.²¹ Further, trans* youth as young as 10 years old have been kicked out of their homes. Some of these youngsters are now living in the sewers of the capital and are selling sex to survive. They are paid extra for condom-less sex, often with married men. This increases their vulnerability to HIV and allows for HIV to pass between the heterosexual and trans* populations. Their poverty and lack of social skills result in these kids engaging in petty theft and other anti-social behavior.

Despite the matter of these homeless youth being brought to the attention of the Government, there have been no concrete steps to provide them with shelter. Instead, police has harassed these vulnerable youngsters and burnt their belongings in an attempt to chase them from their last place of refuge in the gutter²². The youngsters initially resided in abandoned buildings from where they were evicted by police and the buildings torn down.²³ With no other option, the homeless youth now remain in the gully. After another police raid on March 5, the youngsters were again ejected from the sewer and some arrested. At their trial on March 7, a magistrate of the Half-Way-Tree court ruled that the sewers are a public space and so the youth have a right to remain there. Despite this ruling, the youngsters continue to be harassed by

¹⁹ The Prime Minister declared in 2011 that if elected she would call for the conscience vote. In 2013 the Minister of Information declared that the vote would happen before the end of the year. In November the Minister of Justice declared at a public forum held by Jamaicans for Justice that it would happen by March 2014, which is the end of the Parliamentary year. It is now close to the end of March and we have seen no movement towards a vote.

²⁰ *Javed Jaghai v Attorney General of Jamaica*

²¹ Ministry of Justice. (2013). Ministry Of Justice' S Response To Brutal Killing Of Dwayne Jones [Press Release]. Retrieved from <http://moj.gov.jm/sites/default/files/Press%20release%20re%20killing%20of%20Dwayne%20Jones.pdf>

²² <https://www.youtube.com/watch?v=4d2ICYwg5K0> CVM TV News Report Oct. 16, 2013 Accessed March 12, 2014

²³ https://www.youtube.com/watch?feature=player_embedded&v=n-AbIAt1mUE Accessed March 12, 2014

police. A charitable organization established to assist them, Dwayne's House, has received no assistance from the Government, despite meetings with the responsible Member of Parliament.

CONCLUSION

In light of the ongoing abuses against LBT Jamaicans perpetrated by state and non-state actors, we therefore humbly request that the IACHR urge the Jamaican Government to implement the following recommendations in the IACHR report which directly impact the lives of LBT women:

1) Enact legislative reforms designed to bring Jamaica's laws into conformity with the American Convention on Human Rights, including repealing laws criminalizing homosexual conduct; enacting anti-discrimination legislation to protect the human rights and equal treatment of LGBTI and HIV/AIDS infected persons; and criminalizing hate crimes based on homophobia. Modify laws which allow police broad discretionary power to arrest and detain individuals without warrant or cause.

2) Take urgent action to prevent these human rights abuses, including through the adoption of public policy measures and campaigns against discrimination based on sexual orientation. Government officials must take measures to defend sexual minorities from discrimination and stigmatization, and adopt policies that ensure that LGBTI persons may fairly compete for positions within the government.

3) Train all criminal justice officials on international human rights standards and the rights contained in the American Convention as they apply to LGBTI persons, and nondiscrimination. Give those within the criminal justice system information and training on issues around sexuality, gender identity, and HIV/AIDS.

4) Give specific training to police officials regarding international human rights standards and non-discrimination, as well as issues surrounding sexual orientation, gender identity, gender discrimination, and HIV/AIDS. Ensure training occurs at all ranks of police officials.

5) Investigate thoroughly and impartially all acts of discrimination based on sexual preference, especially acts of violence that result in violations of the rights to physical integrity and to life.

6) Train healthcare workers and providers on issues around sexuality, gender identity, and how these play a role in exposing a person to HIV/AIDS.

Further:

1) We recommend that the Government Health Sector, recognize the increased risk of lesbian and bisexual women to HIV and AIDS by creating targeted interventions for this community

and that the National HIV Program disaggregate data based on the sexual orientation of women as well as men, as it currently does.

- 2) We recommend that the Government work with the organizations currently supporting the homeless LGBT youth in Kingston.

As we review the status of the human rights situation and observe the state's reluctance to act in the best interest of *all* its citizens, we want to remind Jamaica of Vision 2030 and encourage the country to truly work to making Jamaica "the place of choice to live, work, have families and do business".