



**Submission to the Independent Expert on  
protection against violence and discrimination  
based on sexual orientation and gender identity**

**to inform his**

**Report to the Human Rights Council on the  
“realisation of the right of persons affected by  
violence and discrimination based on sexual  
orientation and gender identity to the enjoyment  
of the highest attainable standard of physical  
and mental health, in relation to SDG3”**

February 7, 2022

HIV Legal Network  
1240 Bay Street, Suite 600  
Toronto, Ontario  
Canada M5R 2A7

Email: [schu@hivlegalnetwork.ca](mailto:schu@hivlegalnetwork.ca)  
[www.hivlegalnetwork.ca](http://www.hivlegalnetwork.ca)

## INTRODUCTION

1. In response to the call for input from the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (to inform his presentation to the 50th Session of the United Nations Human Rights Council), the HIV Legal Network makes this submission regarding human rights violations against LGBTQ+ people in the Caribbean, focusing on the main barriers — in law or practice — to receiving care that meets their physical and mental health needs.
2. The [HIV Legal Network](#) (formerly the Canadian HIV/AIDS Legal Network) promotes the human rights of people living with, at risk of, or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education, and community mobilization.

## ANTI-LGBTQ+ LAWS IN THE CARIBBEAN

3. A number of countries in the Caribbean, including Jamaica, Dominica, and Barbados, criminalize same-sex conduct between consenting adults.<sup>i</sup> These laws have broad latitude, are vaguely worded, and serve to legitimize discrimination and hostility towards LGBTQ+ people. As the Inter-American Commission on Human Rights (IACHR) has noted, they “contribute to an environment that, at best, does not condemn, and at worst condones discrimination, stigmatization, and violence” against LGBTQ+ persons.<sup>ii</sup> While domestic and international bodies have repeatedly called for the repeal of these laws, state inaction persists. Notably, in 2020, the IACHR published a long-awaited report declaring that Jamaica’s *Offences Against the Person Act* violates several of the individual rights protected by the *American Convention on Human Rights*.<sup>iii</sup> As the IACHR concluded, **“laws, practices or policies that criminalize sexual intercourse between two persons of the same sex not only prevent States from designing and implementing specific health policies for these groups but also directly, seriously and in a discriminatory fashion affect the enjoyment of the right to health.”**<sup>iv</sup>

## DISCRIMINATION AND VIOLENCE AGAINST LGBTQ+ PEOPLE IN THE CARIBBEAN

4. In a 2021 audit of mental health and psychosocial support for LGBTQ+ people in Jamaica, mental health practitioners identified abuse as a common experience among the LGBTQ+ community in Jamaica, whether from partners, family members or members of the communities in which they live. As the audit noted, “Most LGBTQ+ participants were not from home environments in which their identities were accepted or tolerated, and so they described family and community rejection, being victim to bullying in their schools and residential communities and being ‘ostracized’ and forced to leave their family homes. They also described frequent negative criticism and derogatory ‘names’ and comments in private and public spheres of their lives.”<sup>v</sup> Such experiences were quantified in a 2016 survey of 316 LGBTQ+ Jamaicans, in which 71% per cent of gay men, 59% of lesbians, 35% of bisexuals, and 29% of transgender individuals indicated that they had been harassed or discriminated against within the past year.<sup>vi</sup> In Barbados, a petition filed to the IACHR challenging the country’s anti-LGBTQ+ laws described how those laws fuel stigma, facilitate harassment, and induce fear throughout the lives of LGBTQ+ people in Barbados, and resulted in the

petitioners' own experiences of anxiety and depression.<sup>vii</sup> And in a study by the Joint UN Programme on HIV/AIDS (UNAIDS) of men who have sex with men (MSM) in the Caribbean region, nearly 23% of respondents experienced verbal insults or name-calling within the last month, while 33% had been stared at or intimidated because people knew or presumed they were gay.<sup>viii</sup>

5. Actual — or threats of — physical and sexual violence are also part of the fabric of everyday life for many LGBTQ+ people in the Caribbean. In the Eastern Caribbean, Human Rights Watch has documented multiple cases in which strangers, neighbours, acquaintances, and intimate partners targeted LGBTQ+ people with impunity; trans women were particularly vulnerable to attacks by their partners and strangers.<sup>ix</sup> Another Human Rights Watch report noted that Jamaican LGBTQ+ youth are “taunted; threatened; fired from their jobs, thrown out of their homes; beaten, stoned, raped, and even killed.”<sup>x</sup> Similarly, in a case filed by a gay man in Dominica challenging the country’s laws criminalizing consensual same-sex intimacy, the individual claimant described numerous experiences of sexual and physical assault and stressed how the challenged laws “incite and encourage hateful and violent conduct towards LGBT individuals.”<sup>xi</sup> In the UNAIDS study of MSM in the Caribbean, about one in ten MSM reported being physically assaulted in the last five years.<sup>xii</sup>
6. In Caribbean countries with anti-LGBTQ+ laws, many victims of homophobic violence do not report such violence for fear of arrest under laws that criminalize same-sex intimacy.<sup>xiii</sup> Research has shown that many victims are also unlikely to report such violence to the police given pervasive stigma and discrimination, the fear of retaliation, and mistrust of security forces and the criminal justice system.<sup>xiv</sup> The claimant in Dominica challenging the country’s anti-LGBTQ+ laws underscored how those laws “condone police discrimination and inaction against such acts of harassment and violence.”<sup>xv</sup> A 2018 study of LGBTQ+ victims of violence in Jamaica revealed additional reasons for not reporting to the authorities, including because they believed the police would not be helpful (40.5%), feared a homophobic response from the police (25.5%), or felt too ashamed or embarrassed (23%).<sup>xvi</sup> These fears are grounded in numerous reports of police either abusing LGBTQ+ people in Jamaica or refusing to investigate threats and harassment against LGBTQ+ individuals.<sup>xvii</sup> Even when attacks and assaults are reported, prosecution and conviction of perpetrators are rare.<sup>xviii</sup> Numerous incidents of police officers verbally abusing and harassing LGBTQ+ people have also been documented in Barbados.<sup>xix</sup> In a study conducted of gay men in Barbados, participants alleged that filing a police report for verbal or physical abuse usually did not result in any action taken by the police.<sup>xx</sup>

## IMPACTS ON LGBTQ+ HEALTH

7. State-sanctioned stigma, discrimination, and verbal and physical abuse can have serious long-term health consequences on LGBTQ+ people. The 2021 audit of mental health and psychosocial support for LGBTQ+ people in Jamaica revealed “significant levels of mental health issues amongst the population.”<sup>xxi</sup> In the Human Rights Watch investigation of LGBTQ+ people in the Eastern Caribbean, verbal and physical abuse instilled in interviewees feelings of fear, shame, and isolation, and low self-esteem. Interviewees said they often experienced depression, suicidal thoughts, and self-inflicted harm.<sup>xxii</sup> For transgender interviewees, social rejection intensified as they attempted to express their gender identity, contributing to their depression.<sup>xxiii</sup>
8. LGBTQ+ people in Jamaica have also reported being turned away from medical care, poor

quality care, and demeaning treatment by health care staff; one audit found that 53% of LGBTQ+ people in Jamaica reported being forced to undergo seemingly unnecessary medical or psychological testing and one in three indicated experiencing inappropriate inquiry about their sexual orientation or identity from medical staff.<sup>xxiv</sup> MSM in Barbados have reported mistrust in confidentiality of the health system, deterring them from divulging their sexual practices to health care providers.<sup>xxv</sup> A literature review of HIV among MSM in the Caribbean similarly found that a perception among MSM of health care providers being judgmental and unable to respect confidentiality impeded their access to HIV services.<sup>xxvi</sup>

9. As the World Health Organization has noted, in countries where same-sex consensual sexual behaviour is criminalized, people may be deterred from seeking health services for fear of being arrested or prosecuted.<sup>xxvii</sup> Disclosure of one's same-sex sexual activity to health care providers in jurisdictions where such conduct is criminalized is tantamount to disclosing a criminal act, while not disclosing deprives LGBTQ+ people of appropriate and necessary health information and resources, including critical HIV prevention, testing, treatment, and care services.<sup>xxviii</sup> A recent study of HIV in Jamaica concluded that the country's "anti-buggery law is a reminder to MSM that they are rejected by society and criminalized."<sup>xxix</sup> In its 2012 report on the situation of human rights in Jamaica, the IACHR recognized that "laws criminalizing sex between men or homosexual conduct — which have the consequence of obstructing access to medical services — have a direct effect on infection rates and may be a substantial factor contributing to the HIV epidemic in Jamaica. In the Bahamas 10% of gay men are [HIV] positive, which is similar to other English-speaking Caribbean nations that do not criminalize homosexual acts; on the other hand English-speaking Caribbean nations that do criminalize such conduct have a 20-30% rate or higher of infection among the gay male population."<sup>xxx</sup>
10. The Caribbean consequently faces some of the highest rates of HIV in the world, particularly among gay men and other MSM, who accounted for nearly a quarter of new infections in 2017.<sup>xxxi</sup> In Jamaica, for example, HIV prevalence among MSM is nearly 30%,<sup>xxxii</sup> while only 51.0 % of MSM were reported to have access to HIV services.<sup>xxxiii</sup> HIV prevalence among transgender women Jamaica is also high.<sup>xxxiv</sup> In Barbados, HIV prevalence rate among the general population aged 15 to 49 years is 1.5%, compared to a prevalence of 11.8% among MSM.<sup>xxxv</sup>

## RECOMMENDATIONS

11. As has been widely and repeatedly recognized, including by such bodies as UNAIDS, the UN Development Programme (UNDP), the Pan Caribbean Partnership Against HIV/AIDS (PANCAP), the Inter-American Commission on Human Rights, and the Global Commission on HIV and the Law, a legal environment that directly or indirectly criminalizes and stigmatizes LGBTQ+ people undermines effective responses to HIV and other health services. As such, in order to protect health and better understand the health care needs of LGBTQ+ people, States must:
  - Repeal or amend all laws that criminalize or otherwise penalize consensual sexual activity among persons of the same sex.
  - Consistent with the principle of non-discrimination, ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.

- Amend anti-discrimination legislation so such legislation explicitly prohibits discrimination on the grounds of sexual orientation and gender identity, and includes effective measures to identify, prevent, and respond to such discrimination.
- Introduce and implement a gender recognition procedure in accordance with international standards and good practices to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion, ensuring that this process protects privacy and dignity.
- In collaboration with LGBTQ+ organizations, conduct a needs assessment of LGBTQ+ health needs (including HIV-related and mental health services) and develop and implement programming to address those needs. Such assessments should be strictly voluntary, provide protections for participants' identities, and be conducted in ways that respect privacy and dignity.
- In collaboration with LGBTQ+ organizations, develop and conduct training for health care workers on human rights, medical ethics, and HIV, sensitizing them on the health care needs of LGBTQ+ people and workers' responsibility to provide non-judgmental, non-stigmatizing care.

<sup>i</sup> Jamaica, *Offences Against the Person Act (Cap. 269)*, ss. 76, 77 and 79; Barbados, *Sexual Offences Act 1992*, Chapter 154, s. 9. and Dominica, *Sexual Offences Act 1998*, s. 16.

<sup>ii</sup> Inter-American Commission on Human Rights (IACHR), *Report on the Situation of Human Rights in Jamaica*, August 2012, at [www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf](http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf).

<sup>iii</sup> IACHR, *Report on Jamaica, OEA/Ser. L/V/II Doc 419*, December 31, 2020.

<sup>iv</sup> *Ibid.*, para. 112.

<sup>v</sup> K. Morgan and T. Palmer, *Audit of Mental Health and Psychosocial Support Services and Needs for LGBTQ+ Persons in Jamaica*, February 12, 2021.

<sup>vi</sup> R. McFee & E. Galbraith, *The developmental cost of homophobia: The case of Jamaica*, 2016, p. 48.

<sup>vii</sup> Petition to the Honourable Members of the Inter-American Commission on Human Rights, Organization of American States, *Request By Petitioners Hoffmann, "S.A." and "D.H." for a Decision Recommending Repeal of Sections 9 and 12 of Barbados' Sexual Offences Act*, June 6, 2018, p. 62.

<sup>viii</sup> UNAIDS, *CARIMIS: The Caribbean Men's Internet Survey*, 2014, p. 50.

<sup>ix</sup> Human Rights Watch, *"I Have to Leave to Be Me": Discriminatory Laws against LGBT People in the Eastern Caribbean*, March 21, 2018.

<sup>x</sup> Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBTQ+ People in Jamaica*, October 2014.

<sup>xi</sup> Dominica News Online, "Challenge to Dominica's buggery laws filed in Dominica High Court," July 20, 2019

<sup>xii</sup> UNAIDS, *CARIMIS*, p. 50.

<sup>xiii</sup> Human Rights First, *The World as it Should Be: Advancing the Human Rights of LGBTQ+ People in Jamaica*, July 2015.

<sup>xiv</sup> *Ibid.* and Human Rights Watch, *Not Safe at Home*.

<sup>xv</sup> Dominica News Online, "Challenge to Dominica's buggery laws filed in Dominica High Court".

<sup>xvi</sup> D. Smith, "Homophobic and transphobic violence against youth: The Jamaican context," *International Journal of Adolescence and Youth* 23, no. 2 (2018): 250-258, p. 252.

<sup>xvii</sup> Human Rights Watch, *Not Safe at Home*.

<sup>xviii</sup> *Ibid.*

<sup>xix</sup> Petition to the Honourable Members of the Inter-American Commission on Human Rights, Organization of American States, *Request By Petitioners Hoffmann, "S.A." and "D.H." for a Decision Recommending Repeal of Sections 9 and 12 of Barbados' Sexual Offences Act*, June 6, 2018.

<sup>xx</sup> A. Maiorana et al., "On Being Gay in Barbados: "Bullers" and "Battyboys" and their HIV Risk in a Societal Context of Stigma," *J. Homosex* 60:7 (2013): 984-1010.

<sup>xxi</sup> K. Morgan and T. Palmer, *Audit of Mental Health and Psychosocial Support Services and Needs for LGBTQ+ Persons in Jamaica*, February 12, 2021.

- 
- <sup>xxii</sup> Human Rights Watch, “*I Have to Leave to Be Me*”.
- <sup>xxiii</sup> Ibid.
- <sup>xxiv</sup> K. Morgan and T. Palmer, *Audit of Mental Health and Psychosocial Support Services and Needs for LGBTQ+ Persons in Jamaica*, February 12, 2021.
- <sup>xxv</sup> A. Maiorana et al., “On Being Gay in Barbados”.
- <sup>xxvi</sup> W. Dunbar et al., “HIV among men who have sex with men in the Caribbean: reaching the left behind,” *Rev Panam Salud Publica* 45 (March 8, 2021): doi: 10.26633/RPSP.2021.12.
- <sup>xxvii</sup> World Health Organization, *Sexual Health, human rights and the law*, 2015.
- <sup>xxviii</sup> Canadian HIV/AIDS Legal Network, “Constitutional challenge to Jamaica’s anti-sodomy law: Questions & Answers,” December 2015.
- <sup>xxix</sup> J.P. Figueroa, “Understanding the HIV Prevalence of HIV and Other Sexually Transmitted Infections among Socio-Economically Vulnerable Men Who Have Sex with Men in Jamaica,” *PLoS ONE* 10(2) (2015 Feb 6): e0117686. doi: 10.1371/journal.pone.0117686.
- <sup>xxx</sup> IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/11.144, Doc. 12, 10 August 2012, para. 292.
- <sup>xxxi</sup> Avert, *HIV and AIDS in Latin America The Caribbean Regional Overview*, last updated August 2020.
- <sup>xxxii</sup> UNAIDS, *Jamaica Country Factsheet 2020*.
- <sup>xxxiii</sup> C. Logie et al., “Pathways from Sexual Stigma to Inconsistent Condom Use and Condom Breakage and Slippage Among MSM in Jamaica,,” *J Acquir Immune Defic Syndr* 78(5): 2018:513–521.
- <sup>xxxiv</sup> J.P. Figueroa, “Understanding the HIV Prevalence of HIV and Other Sexually Transmitted Infections among Socio-Economically Vulnerable Men Who Have Sex with Men in Jamaica.”
- <sup>xxxv</sup> A. Best and N. Rambarran, “The demographic features and outcome indicators of the Barbados HIV Pre-exposure Prophylaxis Program, 2018-2019,” *Rev Panam Salud Publica* 45 (Apr 23 2021): doi: 10.26633/RPSP.2021.51.