

 <b>Jamaica</b>	
<p><b>National Law:</b></p> <p><i>Offences Against the Person Act, 1864</i><sup>1</sup></p> <ul style="list-style-type: none"> <li>- <b>S76:</b> Unnatural Crime<sup>2</sup></li> <li>- <b>S77:</b> Attempted Buggery or Indecent Assault<sup>3</sup></li> <li>- <b>S79:</b> Outrages on Decency<sup>4</sup></li> </ul>	<p><b>Maximum Penalties:</b></p> <ul style="list-style-type: none"> <li>- 10 years' imprisonment with or without 'hard labour'</li> <li>- 7 years' imprisonment with or without 'hard labour'</li> <li>- 2 years' imprisonment with or without 'hard labour'</li> </ul>
<p><u>Treaty Ratification</u></p> <p>ACHR CEDAW CRC ICCPR ICESCR</p>	
<p>The law is applicable only to men.</p>	
<p>Enforcement</p>	<ul style="list-style-type: none"> <li>- <b>2014:</b> The US Human Rights Country Report noted that the country's anti-buggery law had not been enforced during the year.<sup>5</sup></li> <li>- <b>17 February 2013:</b> Two men caught naked in their car were arrested. Each pleaded guilty and was convicted of gross indecency. The men were sentenced to a fine of \$250,000 each or imprisonment for 6 months.<sup>6</sup></li> <li>- <b>2006:</b> Two men were sentenced to two years' imprisonment with hard labour, suspended, for buggery.<sup>7</sup></li> <li>- Despite claims by police that arrests and prosecutions are rare, Human Rights Watch's (HRW) has found that the country's anti-gay laws are in active use, although conceding that it is impossible to say how frequently they are enforced.<sup>8</sup> A defence lawyer interviewed by HRW said he <i>'always seem[ed] to have a case of a practicing gay man who is in court on account of his sexuality'</i>. He explained how prosecutions fail due to lack of evidence and that many pleaded to a lesser charge of gross indecency, but the charges alone brought 'terror' to defendants.<sup>9</sup></li> </ul>
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> <li>- <b>August 2015:</b> The Mayor of Kingston, Angela Brown-Burke, spoke at Jamaica's first pride event. In an interview before the event she said: <i>'I come from the point of view that I, as mayor, have a responsibility to all the individuals of Kingston.'</i> Jamaican Justice Minister also endorsed the event in a statement: <i>'All Jamaicans, regardless of race, class, creed or indeed sexual orientation are citizens deserving of being treated with civility and human kindness.'</i><sup>10</sup></li> </ul>

- **July 2015:** Minister for Education Ronald Thwaites announced the launch of a new manual aimed at reducing homophobic bullying in schools: *'Bullying not only affects this society (LGBT), as we have heard reports of issues with regards to older students interfering with younger students, issues of gender also arise.'*<sup>11</sup>
- **June 2015:** An Anglican priest in Kingston, the Rev. Sean Major-Campbell, wrote an article in Jamaican paper *The Gleaner* in which he stated *'Sexuality is a justice issue. Sexuality is a human-rights issue. Gender concerns are at the heart of how people live and move and have their being.'*<sup>12</sup> In December 2014, *Pink News* reported that Rev. Major-Campbell had received a *'backlash from his congregation'* after washing the feet of two lesbians to show respect for the LGBT community.<sup>13</sup>
- **June 2015:** Jamaica's major daily newspaper *The Gleaner* published [an editorial](#) supporting the U.S. Supreme Court's marriage equality ruling and calling on Jamaica to take a similar course.<sup>14</sup> A year earlier, in another editorial *The Gleaner* stated that *'[the prohibition on same-sex unions is] an assault on the principle of equality of people, people's right to forge relationships, and their right to equal protection under the law.'*<sup>15</sup>
- **April 2015:** In its national report submitted for the UPR 2<sup>nd</sup> cycle, the Jamaican delegation stated that the Jamaica Constabulary Force's Diversity Policy *'guides members of the police force in their professional dealings with persons of particular groups, including LGBTs.'*<sup>16</sup>
- **April 2015:** During a visit to Jamaica, Barack Obama took the opportunity of a town hall meeting at the University of the West Indies to recognise LGBT advocates from the country including Angeline Jackson, executive director for Quality of Citizenship Jamaica. *'She cares about her Jamaica, and making it a place where everybody, no matter their color, or their class, or their sexual orientation, can live in equality and opportunity.'*<sup>17</sup>
- **1 May 2014:** Leader of the Opposition in Jamaica, Andrew Holness, said that he would have no problem working with gay people in his cabinet. This stands in contrast to comments he made on 25 April, where he stated his opposition to repealing the country's sodomy laws: *'My sentiments reflect the sentiments of the country.'*<sup>18</sup>
- **10 April 2014:** Jamaica's Minister of Health, Dr. Fenton Ferguson, spoke on the need to change social attitudes in order to fight HIV and AIDS within the country: *'Strong cultural and religious beliefs have led to the isolation of some high-risk groups such as men who have sex with men and sex workers. It will not be easy to tackle these deeply embedded belief systems but we have to succeed [as] failure is not an option.'*<sup>19</sup>
- **18 August 2013:** According to the Minister of Sport in Jamaica, gay athletes would

	<p>not be discriminated against: <i>‘Sport is a right and a privilege for all Jamaicans right across the board... We don’t ask as a prerequisite what is your sexual preference, as long as you qualify and apply yourself.’</i><sup>20</sup></p> <ul style="list-style-type: none"> <li>- <b>September 2013:</b> Jamaican Assistant Police Commissioner Devon Watkis denied that a recent escalation of violence towards LGBTI victims is specifically related to their sexuality: <i>‘I have no specific evidence outside of those isolated ones, that [LGBT people are] a target group as opposed to the ordinary citizen’.</i><sup>21</sup></li> <li>- <b>June 2012:</b> The popular Jamaican reggae musician <a href="#">Diane King</a> came out as a lesbian. In the message, she wrote <i>‘honestly speaking, I have always been afraid to admit it openly, because of the unknown, of what it may cause negatively, to me, my career, my family and loved one.’</i><sup>22</sup></li> <li>- In relation to a constitutional challenge of the laws criminalising homosexuality where a number of Christian groups have successfully applied as interested parties, a small minority of religious figures have called for greater tolerance of homosexuals. One such leading theologian, Rev Dr Clinton Chisholm, has reminded his countrymen that Jamaica is not a theocracy.<sup>23</sup></li> <li>- Portia Simpson Miller, when standing for election as Prime Minister in December 2011, declared that <i>‘no one should be discriminated against because of their sexual orientation’</i> and that she would allow a conscience vote to repeal laws criminalising homosexuality.<sup>24</sup></li> </ul>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> <li>- <b>22 September 2015:</b> A gay man was rescued by police after an angry mob cornered him inside a bank parking lot in Half Way Tree in Jamaica. He was reportedly attacked by a mob while he was walking with three friends in the area.<sup>25</sup></li> <li>- <b>August 2015:</b> Over 50 people attended the opening ceremony of Jamaica’s first pride festival, organised by the Jamaican Forum for Lesbians and Gays.<sup>26</sup></li> <li>- <b>July 2015:</b> The Jamaican Court of Appeal began hearing an appeal filed by activist Maurice Tomlinson, challenging national television stations that refused to air a ‘tolerance ad’ promoting the human rights of LGBTI people.<sup>27</sup></li> <li>- <b>May 2015:</b> In response to recommendations from Argentina and Slovenia in the 2<sup>nd</sup> Round of the UPR, Jamaica stated that it <i>‘considers it is committed to taking steps to end prejudice and stigmatisation affecting all Jamaicans, including LGBTI persons.’</i><sup>28</sup></li> <li>- <b>15 April 2015:</b> Homeless gay teens thrown out by their families were reportedly chased out of a shelter by a mob in Kingston. The mob attacked them in a popular shopping venue in Kingston in order to “cleanse” the premises.<sup>29</sup></li> </ul>

- **March 2015:** A YouTube video appeared to show the public execution of a young man stoned in the street by a crowd chanting antigay slurs.<sup>30</sup>
- In the six months to November 2014, *The Jamaica Observer* newspaper published a number of articles described by critics as overtly anti-gay. One story was headlined 'The Pushback Against Gays Has Begun'; another '*Homo Thugs!*' A third, unsourced story alleged that a group of gay men had assaulted a male jogger.<sup>31</sup>
- **October 2014:** A Human Rights Watch report found that LGBT people in Jamaica face 'intolerable levels of violence and cannot rely on the police' for protection. The report documented 56 cases of violence against LGBT Jamaicans, and found evidence of LGBT people being refused housing or employment on the basis of their sexuality.<sup>32</sup>
- **2014:** The US Department of State's 2014 Human Rights Report for Jamaica found that during the year:
 

*homophobia was widespread in the country, perpetuated by the country's dancehall culture through the songs and the behavior of some musicians. Lesbian, gay, bisexual, and transgender (LGBT) persons faced violence, harassment, and discrimination.*<sup>33</sup>

The report further noted instances of 'serious human rights abuses', including assault with deadly weapons, '*corrective rape*' of women accused of being lesbians, arbitrary detention, mob attacks, stabbings, harassment of gay and lesbian patients by hospital and prison staff, and targeted shootings of such persons. Within the prison system there were reports of violence against gay inmates, perpetrated by the wardens and by other inmates. Male prisoners identified as gay were held in a separate facility apparently for their own protection.<sup>34</sup>
- Human Rights Watch has described Jamaica as one of the most homophobic countries in the world. This was endorsed, and fostered, by politicians at the highest levels. For example in 2009, then Prime Minister Bruce Golding publicly stated that '[w]e are not going to yield to the pressure, whether that pressure comes from individual organisations, individuals, whether that pressure comes from foreign governments or groups of countries, to liberalise the laws as it relates to buggery.'<sup>35</sup>
- **27 August 2013:** A 41 year old openly gay hospitality worker, Dean Moriah, was stabbed and had his home torched while he was still inside in an incident suspected to be a hate-motivated crime.<sup>36</sup>
- **26 August 2013:** Two gay men from Old Harbour were forced to flee the scene of a car accident after witnesses realised the men were gay and pursued them. They were forced to take refuge in the local police station.<sup>37</sup>
- **22 August 2013:** Five gay men were subject to attacks from fellow community

	<p>members. They were forced to take refuge in a dwelling until police came to disperse the crowds.<sup>38</sup></p> <ul style="list-style-type: none"> <li>- <b>10 August 2013:</b> A cross-dresser in St Catherine was attacked by a mob.<sup>39</sup></li> <li>- <b>1 August 2013:</b> A police officer, presumed to be gay, was mobbed in downtown Kingston. Fellow police officers were forced to disperse the crowds by firing into the air and using teargas.<sup>40</sup></li> <li>- <b>1 August 2013:</b> Two men from the parish of St Catherine were set upon by mobs.<sup>41</sup></li> <li>- <b>22 July 2013:</b> Dwayne Long Jones, a 17 year old, was stabbed and shot to death and thrown into bushes during a public street-dance near Montego Bay. The attack was apparently prompted by the fact that he wore gender non-conforming attire and was dancing with someone of the same sex.<sup>42</sup></li> </ul>
Legislative News	<ul style="list-style-type: none"> <li>- <b>May 2015:</b> At the UPR 2<sup>nd</sup> Cycle, Argentina, Germany, the USA and Slovenia recommended Jamaica decriminalise sexual activity between consenting adults of the same sex. In response Jamaica's Minister of Justice stated that:  <i>The Constitution of Jamaica guarantees basic human rights to all Jamaicans. There is no discrimination based on gender or sexual orientation. No law criminalizes orientation. No credible case of arbitrary detention or harassment of persons on the basis of sexual orientation has been presented.</i><sup>43</sup></li> <li>- <b>July 2014:</b> An official at J-FLAG, a prominent LGBT NGO, withdrew the petition he had filed with the Supreme Court in 2013 challenging Jamaica's anti-buggery law. In dropping the suit, the petitioner cited threats against himself and his family.<sup>44</sup></li> <li>- <b>June 2014:</b> An estimated 25,000 people attended a rally in Kingston in support of Jamaica's anti-gay law.<sup>45</sup></li> <li>- <b>5 June 2014:</b> The country noted it could not join the consensus on the approval of an OAS resolution on sexual orientation, considering that:  <i>the terminology of gender expression, as proposed, is ambiguous and has the potential to impose one value system over another. Furthermore, this term and other new terminologies used in the text, have not gained international acceptance nor are they defined in Jamaica's domestic law.</i><sup>46</sup></li> <li>- <b>2014:</b> The Jamaican Sexual Offences Act is set to undergo review. The Act contains a provision which calls for review every 5 years. According to a report in the <i>Jamaican Observer</i>, Justice Minister Mark Golding said he 'would not be surprised if the contending parties use the opportunity, provided by the review, to make their cases for and against repealing the buggery legislation'.<sup>47</sup></li> <li>- <b>2011:</b> A new Charter of Fundamental Rights was passed to expand the Bill of Rights</li> </ul>

	<p>but included a savings clause effectively precluding any constitutional challenge of laws criminalising homosexuality.</p> <ul style="list-style-type: none"> <li>- <b>2011:</b> (UPR) The government stressed it will take all necessary steps to avoid homophobic violence, but rejected the recommendations to repeal all legal provisions which may discriminate against or criminalise people based on their sexual orientation or gender identity.<sup>48</sup></li> <li>- <b>2009:</b> The Sexual Offences Act passed, which was intended, among other things, to replace most of the provisions in the Offences Against the Persons Act concerning sexual offences but parliament declined to make any changes to relevant sections criminalising homosexuality.</li> </ul>
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<sup>1</sup> Text of the law is :

[http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act\\_0.pdf](http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf)

<sup>2</sup> *Offences Against the Person Act, s.76: 'Whosoever shall be convicted of the abominable crime of buggery, 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.'*

<sup>3</sup> *Offences Against the Person Act, s.77: '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.'*

<sup>4</sup> *Offences Against the Person Act, s.79: '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 two years, with or without hard labour.'*

<sup>5</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014*, June 2015),

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236700> accessed on 1 September 2015.

<sup>6</sup> Turner, R., 'Men found naked inside car', *Jamaica Star*, 17 February 2013, <<http://jamaica-star.com/thestar/20130216/news/news8.html>> accessed on 19 July 2014

<sup>7</sup> Amnesty International, *Amnesty International Report 2006 - Jamaica*, 23 May 2006, <<http://www.refworld.org/docid/447ff7ac16.html>> accessed on 19 July 2014

<sup>8</sup> Human Rights Watch, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*, November 2004, <<http://www.hrw.org/sites/default/files/reports/jamaica1104.pdf>> accessed on 19 July 2014 at 22

<sup>9</sup> Human Rights Watch, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*, November 2004, p 22 <<http://www.hrw.org/sites/default/files/reports/jamaica1104.pdf>> accessed on 19 July 2014

<sup>10</sup> Lavers, M.K., 'Mayor of Jamaican capital to speak at Pride event', *Washington Blade*, 31 July 2015, <<http://www.washingtonblade.com/2015/07/31/mayor-of-jamaican-capital-to-speak-at-pride-event/>> accessed on 19 September 2015

<sup>11</sup> Gilpin, J., 'No Bullying Gay Youths - Harassment Of Homosexuals Triggers New Security Manual In Schools', *The Gleaner*, 17 July 2015, <<http://jamaica-gleaner.com/article/lead-stories/20150717/no-bullying-gay-youths-harassment-homosexuals-triggers-new-security>>

<sup>12</sup> Major-Campbell, S., 'Sexuality is a justice issue', *The Gleaner*, 3 June 2015, <<http://jamaica-gleaner.com/article/commentary/20150603/sexuality-justice-issue>>

<sup>13</sup> Duffy, N., 'Jamaican priest washes the feet of lesbians and calls for "respect" for human rights', *Pink News*, 10 December 2014, <<http://www.pinknews.co.uk/2014/12/10/jamaican-priest-washes-the-feet-of-lesbians-and-calls-for-respect-for-human-rights/>>

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- <sup>14</sup> 'Editorial: A Matter Of Fundamental Rights', *The Gleaner*, 28 June 2015 <<http://jamaica-gleaner.com/article/commentary/20150628/editorial-matter-fundamental-rights>>
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- <sup>16</sup> UNHRC, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, 27 April 2015, UN Doc A/HRC/WG.6/22/JAM/1
- <sup>17</sup> Grindley, L., 'Obama Isn't Quiet About LGBT Rights, Even in Jamaica Trip', *The Advocate*, 11 April 2015, <<http://www.advocate.com/world/2015/04/11/obama-isnt-quiet-about-lgbt-rights-even-jamaica-trip>>
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- <sup>26</sup> 'J-FLAG's PRIDE week 'well supported'', *Jamaica Observer*, 3 August 2015, <[http://www.jamaicaobserver.com/news/J-FLAG-s-PRIDE-week--well-supported->Colin-Stewart\\_Jamaica-today-Challenging-homophobic-TV-stations\\_\(76-Crimes](http://www.jamaicaobserver.com/news/J-FLAG-s-PRIDE-week--well-supported->Colin-Stewart_Jamaica-today-Challenging-homophobic-TV-stations_(76-Crimes),
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