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A CARIBBEAN OUTLIER

REPEAL ANTI-LGBTQI+ LAWS IN JAMAICA





INTRODUCTION

Two years ago, on 17 February 2021, the Inter-American Commission on Human Rights (IACHR) published its final report in the case of Gareth Henry and Simone Carline Edwards v Jamaica. The decision was historic – for the first time, the IACHR found that homophobic, colonial-era laws that criminalize men who have sex with men contravene the American Convention on Human Rights and that the Jamaican government was responsible for violating multiple rights of Mr Henry and Ms Edwards. The top human rights tribunal called for the immediate repeal of the criminalizing laws and made recommendations to improve the situation of LGBTQI+ people in Jamaica.

To this day, Jamaica has failed to take any material action in response to the IACHR's findings and the clear recommendations

set out in its report, or to even acknowledge the urgency of this crucial issue. Even in the face of the wave of progress experienced by its Caribbean neighbours, Jamaica's homophobic laws remain in force, and, as this report clearly lays out, LGBTQI+ Jamaicans continue to suffer horrific violence, discrimination and persecution, and lack the most basic protections under the law.

In the face of this lack of progress, Gareth Henry, together with international organizations the Human Dignity Trust and Rainbow Railroad, renew their call for Jamaica to comply with the IACHR's requirements for change, to take urgent action to repeal its outdated and homophobic laws, and to fall into step with other Caribbean nations to make Jamaica a safer place for all, including the LGBTQI+ community.

At a Glance

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THE CASE BEFORE THE IACHR

& THE CRIMINALIZING LAWS IN
JAMAICA

IN DECEMBER 2011, Gareth Henry, a gay Jamaican citizen, led a petition with the IACHR to challenge Jamaica's "buggery laws". Simone Edwards, a lesbian Jamaican woman, was joined as an additional victim to the petition in 2014.

Set out in sections 76, 77 and 79 of the Offences Against the Person Act 1864 (OAPA), and dating from before Jamaica's independence, these laws criminalize private consensual sex between men, and are punishable by imprisonment and hard labour.



The IACHR found that Jamaica, in maintaining the buggery laws and failing to properly investigate and prosecute violence against the LGBTQI+ community, violated a number of Mr Henry and Ms Edwards' human rights, including the right to humane treatment, the right to privacy, the right to freedom of movement and residence, the right to equal protection and the right to judicial protection.

The IACHR set out multiple requirements for change for Jamaica, instructing it to (1) repeal sections 76, 77 and 79 of the OAPA, (2) adopt an anti-discrimination legal framework to prohibit discrimination based on sexual orientation, gender identity or expression and body diversity, (3) apply due diligence in the prevention, investigation, punishment and reparation of violence against LGBTQI+ persons, and (4) ensure that police investigations are not permeated by prejudice.



Importantly, the IACHR acknowledged that the buggery laws continue to do harm to all LGBTQI+ citizens in Jamaica, not just men who have sex with men. The culture of homophobia and violence they foster has a severe detrimental impact on the entire LGBTQI+ community - including women - not just those the laws technically criminalize.





JAMAICA IN 2022

IMPACT OF THE BUGGERY LAWS

Research carried out by Rainbow Railroad, and Mr Henry's own experience from his ongoing work with the local LGBTQI+ community, suggest that the situation for LGBTQI+ people in Jamaica remains dire.

The number of requests for assistance received by Rainbow Railroad from Jamaicans has increased year on year since 2019, with 322 requests received in 2021 alone. In 2022, LGBTQI+ people seeking help from Rainbow



Railroad reported 221 instances of being beaten up, shot at or “chopped” (i.e. attacked/ wounded with a machete). A further 101 reports of family-based violence were made in 2020 and 2021 alone, whilst those seeking help in 2021 reported 185 instances of having experienced or feared public humiliation, sexual violence or police brutality in Jamaica.

Gareth Henry himself experienced this type of violence and was forced to leave Jamaica and seek asylum in Canada in January 2008. Amongst other attacks, in 2003, he was beaten by a police officer in front of a crowd of approximately 70 people who encouraged the attack. In 2007, Mr Henry was again beaten by four policemen in a pharmacy in front of an angry mob of approximately 200 people, after he refused to answer a question about whether he was a “batty man” (a gay man).

Rainbow Railroad’s evidence shows that, despite 14 years passing since Mr Henry left Jamaica, violence against the LGBTQI+ community remains endemic. As recently as September 2022, Mr Henry was contacted by community leaders about the murder of a young man who went to meet someone he met on a dating app and whose body was later found with a knife through his chest and his penis severed. In the same month, a video surfaced of a gay man being chased by 300 to 400 people. When he barricaded himself inside a store, the mob chanted that they wanted to harm and kill him.

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This violence does not just affect men who have sex with men. Despite it being legal in Jamaica for women to engage in consensual sexual conduct with other women, LBTQI+ women are often the victims of targeted violence. In Mr Henry's and Rainbow Railroad's experience, it is not uncommon for the families of LBTQI+ women to organise the rape of them or their partner, or to turn a blind eye to other family members committing acts of violence towards them.

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Jamaica has argued that sections 76, 77 and 79 of the OAPA do not cause harm on the basis that they are not routinely enforced. However, the IACHR, in its final report, disagreed – saying that: *"the laws reinforce already existing societal prejudices and severely increase the negative effects of such prejudices on the lives of LGBTI persons.... [Their existence] is used as a mechanism*

for social control and domination that enables states to legitimize and contribute to the stigma of LGBTI persons as immoral individuals". Beyond that, Mr Henry believes that even if the Jamaican police are not formally enforcing these laws, they continue to use them as a tool to perpetuate a culture of homophobia and fear.



BEYOND THE BUGGERY LAWS

FEW OTHER SIGNS OF CHANGE

THE BUGGERY LAWS contribute to a culture of widespread societal discrimination against the LGBTQI+ community, and Jamaica's failure to act means this has not been remedied. As a result, LGBTQI+ Jamaicans still face serious issues in accessing healthcare, jobs, education and housing.

In particular, discrimination against LGBTQI+ people leads to poor health outcomes. Mr Henry's experience, from his personal networks and work at Rainbow Railroad, is that men who have sex with men are often subject to discrimination by health authorities, including refusal of treatment or, in extreme cases, violence. There is also a concern that medical professionals might disclose patients' sexual orientation to others in their community, placing them in danger. Together, these fears



mean many LGBTQI+ Jamaicans do not seek the medical help they need. For example, Mr Henry is aware of a 20-year-old trans woman who was shot in the foot in January 2021. She reported that when she went to the hospital, she was treated rudely by hospital staff, who misgendered her and made her leave the hospital early despite her being in terrible pain and unable to walk. She did not seek further medical care for her injuries after that experience because she was scared of facing further discrimination. In addition, the police never tried to find the person who shot her.

The culture of homophobia also leaves the LGBTQI+ community vulnerable: it is widely reported that many LGBTQI+ young people are disowned by their parents and driven to living on the streets and in the sewers

to avoid violence and persecution, severely affecting their access to education. The situation is worsened by the complete lack of anti-discrimination protection, including in housing and employment laws, and many in the community become severely vulnerable to acts of violence. For example, one young trans woman was shot at in Kingston in 2021 and has suffered repeatedly from physical violence, having been forced out of her community aged 13 due to her gender identity, left unable to complete her education and without any family support.

Even where LGBTQI+ Jamaicans do feel able to report their experiences of violence and discrimination to the authorities, there is strong sentiment that the police often fail to properly investigate these claims or prosecute the perpetrators. Despite widespread reports,

and the IACHR finding expressly that the State has contributed to the perpetration of violence, Jamaica has taken no real action to correct this.

According to Mr Henry, there are few opportunities for justice for the LGBTQI+ community in Jamaica, and the Government has failed to take meaningful steps towards progress and the protection of the LGBTQI+ community.

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JAMAICA FALLING BEHIND

THE WAVE OF CHANGE
SWEEPING THE CARIBBEAN

WHILE JAMAICA HAS RESISTED CHANGE,

other Caribbean nations have made significant progress in dismantling their own homophobic laws and protecting their citizens. This position has isolated Jamaica as other Caribbean countries take steps to improve the rights of their LGBTQI+ populations. Courts in Belize and Trinidad and Tobago struck down laws criminalizing same-sex relations as unconstitutional in 2016 and 2018 respectively, with the decision in Trinidad and Tobago subject to appeal from the Government. The equivalent laws in Antigua and Barbuda were struck down as unconstitutional in July 2022, followed by St. Kitts and Nevis in August and Barbados in December 2022, subject to any appeal. Two further judgments are pending in Dominica and St Lucia. In fact, Jamaica remains



one of only six countries in the Americas and Caribbean where colonial-era laws criminalizing consensual same-sex sexual activity remain. While the winds of legal change blow across the Caribbean, Jamaica must urgently begin the process of change to avoid becoming a regional outlier.

Jamaica must repeal sections 76, 77 and 79 of the OAPA and take immediate action to protect its own citizens and to tackle discrimination against LGBTQI+ Jamaicans.

About Gareth Henry

Gareth Henry is an LGBTQI+ activist and the lead petitioner in the case against Jamaica at the IACHR. He continues to support LGBTQI+ people seeking safe haven from state enabled homophobia, murder or persecution through his work as a Senior Programs Officer and Casework Supporter with Rainbow Railroad.

About Rainbow Railroad

Rainbow Railroad is a global not-for-profit organisation that helps LGBTQI+ people facing persecution based on their sexual orientation, gender identity and sex characteristics. For further information, look [here](#).

About the Human Dignity Trust

The Human Dignity Trust uses the law to defend the human rights of LGBT people globally and was proud to support Gareth Henry and Simone Edward's petition to the IACHR to challenge Jamaica's homophobic laws. For further information, look [here](#).

Findings of the IACHR

The IACHR found that Jamaica had breached the American Convention on Human Rights to the detriment of Mr Henry and Ms Edwards, including: Article 5.1 (Right to Humane Treatment), 11 (Right to Privacy), 22.1 (Freedom of Movement and Residence), 24 (Right to Equal Protection), and 25.1 (Right to Judicial Protection). The full report is available [here](#).



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