



MEMORANDUM

To: Nancy Nicol, Principle Investigator, York University, Envisioning Global LGBT Human Rights (funded by the Social Science and Humanities Research Council of Canada)*
From: Atrisha Lewis (3L) & Zahra Ahmed (LL.M.), International Human Rights Clinic
Date: January 2nd, 2012
Re: **Jamaica's Interactions with the UN System on the Issue of LGBT Rights**

This document was prepared by law students and highlights publicly-accessible information available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto, Faculty of Law cannot provide such advice or assistance.

Overview of the UN System

There are two major human rights systems at the United Nations (the "UN"): the Treaty based system and the Charter based system. The treaty-based human rights system consists of nine treaty bodies that monitor state compliance with the obligations under their respective conventions. Each treaty body is comprised of a committee of independent experts that interpret and apply the convention in reviewing and commenting on periodic state reports and individual complaints. The treaty bodies are not judicial institutions and there is debate as to the nature of the body of law that the treaty bodies produce.¹ Regardless of whether these normative findings are actually law, they have legal significance as they are referenced in international and domestic decisions.²

The Charter based human rights system derives its authority from the UN Charter itself. The UN Human Rights Council, the successor to the Human Rights Commission is the main organ in this Charter based system. The mandate of the Human Rights Council is to make recommendations on situations of human rights violation, while being guided by principles of "universality, impartiality, objectivity, and non-selectivity."³ This intergovernmental body, which meets in Geneva 10 weeks a year, is composed of 47 elected United Nations Member States who serve for an initial period of 3 years, and cannot be elected for more than two consecutive terms. The Human Rights Council oversees the Universal Periodic Review (UPR), which is a process that involves a review of the human rights records of all 192 UN Member States once every four years.

While not a human rights system, the General Assembly also deals with human rights issues through its broad mandate. Established in 1945 under the Charter of the United Nations, the General Assembly is the chief deliberative, policymaking and representative organ of the United

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¹ Burgenthal, *The Evolving International Human Rights System* 100 A.J.I.L. 788, 787-791

² *Ibid*

³ G.A. Res. 60/251 (March 15, 20006)



Nations. Comprising all 193 Members of the United Nations, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter.

Jamaica

1. Summary

- Jamaica officially rejects the notion of violence or discrimination directed towards LGBT people. However, Jamaica remains unwilling to decriminalize homosexuality.
- On a positive note, Jamaica indicated it was resources constraints that limit its ability to engage in a comprehensive SOGI education campaign, rather than any anti-homophobic rationale.
- At the UN, Jamaica’s voting pattern relating to SOGI issues is inconsistent. Jamaica offers no rationale for this.
- A notable regret is that Jamaica’s Charter of Fundamental Rights and Freedoms was passed in April 2011 without any reference to sexual orientation.

2. Treaty/ Convention Status

The following chart highlights the international treaties that are germane to the protection of sexual orientation and gender identity rights. Jamaica has ratified most relevant treaties. The chart highlights when Jamaica ratified the relevant conventions.

Treaty	Date of Ratification
Convention on the Elimination of all forms of Racial Discrimination (“CERD”)	4 Jun 1971 (Reserves the applicability that goes beyond its constitution)
International Covenant on Civil and Political Rights (“ICCPR”)	3 Oct 1975
Optional Protocol to the ICCPR	Denounced the Protocol on 23 October 1997
International Covenant on Economic, Social and Cultural Rights (“ICESCR”)	3 Oct 1975
Convention on the Elimination of all forms of Discrimination Against Women (“CEDAW”)	19 Oct 198
Convention against Torture (“CAT”)	Not signed ⁴
Convention on the Rights of the Child (“CRC”)	14 May 1991

⁴⁴ Jamaica indicated at its UPR that it is reviewing the Convention against Torture with a view to taking a decision on ratification



3. All Official State Positions on LGBT Rights as Reflected in Voting Patterns and Statements at the UN

General Assembly Resolutions

The votes on the draft resolutions relating to the *Special Rapporteur on Extra-judicial executions* are tracked in the following chart. The resolution relates to whether the scope of investigation should specifically include investigating extra-judicial killings on the basis of sexual orientation. The chart tracks draft resolutions because this is where the clear statements and votes relating to include or remove the explicit reference to “sexual orientation” actually occur. The final resolutions are typically passed without any discussion relating to the inclusion or removal of the words “sexual orientation.” Jamaica’s voting pattern on this issue is bizarre and there is no indicators explaining the inconsistency.

Final Resolution	Draft Resolution	Vote/ Comments
57/214	2002 Draft Resolution ⁵	
	New reference to "sexual orientation"	In Favour
59/197	2004 Draft resolution ⁶	
	Retain words "sexual orientation"	Abstain
63/182	2009 Amendment ⁷ to Draft Resolution ⁸	
	Remove words "sexual orientation"	Abstain
65/208	2010 Amendment ⁹ to Draft Resolution ¹⁰	
	Remove words "sexual orientation"	In Favour
	2010 Amendment ¹¹ to Draft Resolution ¹²	
	Re-include "sexual orientation"	Abstain

⁵ A/C.3/57/L.56/Rev.1

⁶ A/C.3/59/L.57/Rev.1

⁷ A/C.3/63/L.75

⁸ A/C.3/63/L.35/Rev.1

⁹ A/C.3/65/L.65

¹⁰ A/C.3/L.29/Rev.1

¹¹ A/65/L.53

¹² A/C.3/L.29/Rev.1



4. All UN Statements on the situation of LGBT rights in the countries of focus

Universal Periodic Review

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The Universal Periodic Review process began in 2006 and the first round will be completed by 2011. The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups (Special Procedures), human rights treaty bodies, and other UN entities; 3) information from other stakeholders including non-governmental organizations and national human rights institutions. Following the State review, a report referred to as the “outcome report” is produced. This report consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State. In 2011, Jamaica underwent its UPR.

Recommendations ¹³	Response
<p>99.34. Provide all enforcement officials with proper sensitivity training in relation to sexual orientation, gender identity and HIV/AIDS (Slovenia);</p> <p>100.23. Start a public information campaign to combat discrimination based on sexual orientation (Netherlands).</p> <p>101.21. Decriminalize sexual activity between consenting adults of the same sex, and address hate crimes on the grounds of sexual orientation and gender identity, as a matter of urgency (Slovenia);</p> <p>101.23. Include in the Charter of Rights Bill, currently before Parliament, a specific prohibition of discrimination on the grounds of sexual orientation and repeal all legal provisions criminalizing consensual relations between adults of the same sex; and combat this type of discrimination through awareness-raising campaigns and education programmes in school (Spain);</p> <p>101.25. Remove legislation which discriminates</p>	<p>“Regarding the issue of sexual orientation, Jamaica stressed that, although consensual sex between adult males remained proscribed by law, there was no legal discrimination against persons on the grounds of their sexual orientation. Jamaica pointed out that Jamaican law did not criminalize lesbian, gay, bisexual and transgender orientation, nor did the Government condone discrimination or violence against lesbian, gay, bisexual and transgender persons. It added that there had been no credible cases of arbitrary detention and/or harassment of such persons by the police, nor was there any such official policy. Likewise, there was no evidence of any mob-related killing of lesbian, gay, bisexual or transgender persons.”¹⁴</p> <p>“Jamaica stressed that the issue of male homosexuality was one of great sensitivity in Jamaican society, in which cultural norms, values, religious and moral standards underlay a rejection of male homosexual behaviour by a large majority of Jamaicans; and that the Government was committed to ensuring that all citizens were protected from violence”¹⁵</p>

¹³ A/HRC/16/1

¹⁴ A/HRC/16/1 at para 31

¹⁵ A/HRC/16/1 at para 32



<p>against individuals on the basis of their sexual orientation or gender identity (Australia)</p>	<p>“With regard to sexual orientation and discrimination, Jamaica explained that the government has raised public awareness of these issues and will continue to do so, but that this needed resources.”¹⁶</p> <p>“Sexual orientation remains a sensitive issue. However, the Government will endeavour to take the necessary steps to address the concerns of all individuals”¹⁷</p>
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Human Rights Committee

Jamaica is obligated under the ICCPR is to make national reports to the Human Rights Committee. In 2010, SOGI issues were discussed at Jamaica’s examination:

List of Issues	Government Reply
<p>“According to information before the Committee, homosexuals are subjected to discrimination and ill-treatment in the State party. Please indicate whether the State party intends to revise the definition of discrimination adopted in the Charter of Fundamental Rights and Freedoms to prohibit using gender identity and sexual orientation as grounds for discrimination. Furthermore, the Offences against the Person Act criminalizes consensual sexual activity between persons of the same sex, acts punishable by imprisonment of up to 10 years. Please provide information on the number of cases, if any, in which this provision has been applied, and whether there are any steps taken to decriminalize same-sex relationship”¹⁸</p>	<p>“There is no indication that Parliament intends to revise the definition of discrimination proposed in the Charter of Fundamental Rights and Freedoms to include gender identity and sexual orientation. Although consensual sex between adult males remains proscribed by law, there is no legal discrimination against persons on the grounds of their sexual orientation. The Government of Jamaica is opposed to discrimination or violence against homosexuals.”¹⁹</p>

Concluding Observations

“While welcoming the adoption of the Charter of Fundamental Rights and Freedoms in April 2011, the Committee regrets that the right to freedom from discrimination is now expressed on the grounds of ‘being male or female’, failing to prohibit discrimination on grounds of sexual orientation and gender identity. The Committee is also concerned that the State party continues to retain provisions under the Offences against the Person Act which criminalises consensual same-sex relationships, thus promoting discrimination against homosexuals. The Committee further

¹⁶ A/HRC/16/1 at para 84

¹⁷ A/HRC/16/14/Add.1

¹⁸ CCPR/C/JAM/Q/3 at para 6

¹⁹ CCPR/C/JAM/Q/3/Add.1 at para 50



regrets reports of virulent lyrics by musicians and entertainers that incite violence against homosexuals (arts. 2, 16, 26)

The State party should amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity. The State party should also decriminalize sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant and put an end to prejudices and the social stigmatization of homosexuality. In this regard, the State party should send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation, and should ensure that individuals, who incite violence against homosexuals, are investigated, prosecuted and properly sanctioned.”²⁰

Special Procedure Reports

Special procedures are established by the Human Rights Council. Special procedures examine, monitor, advise and publicly report on human rights situations in specific countries (country mandate) or on major phenomena of human rights violations worldwide (thematic mandates). The following chart outlines concerns of any special procedures relating to SOGI issues in Jamaica.

Date	Special Procedure	Concern	Response
27 March 2007	Special Representative of the Secretary-General on the situation of human rights defenders	The Special Representative requested that the Government of Jamaica investigate the killing of Mr Harvey, a human rights defenders working with lesbian, gay, transgendered and bisexual and HIV/AIDS issues in Jamaica ²¹	No Response
December 2004	Special Representative of the Secretary-General on the situation of human rights defenders	The Special Representative communicated her concerns to the Government of Jamaica regarding published comments of the Police Federation’s Public Relations officer condemning the role of “so-called” human rights organizations and dismissing concerns regarding violence against LGBTI defenders, stating that “the Government and police cannot be held responsible for ... the cultural responses of the population” ²²	No Response

5. Individual Complaints

Jamaica has not accepted the competency of any UN agency to hear individual complaints.

²⁰ CCPR/C/JAM/CO/3

²¹ A/HRC/4/37/Add.1

²² A/HRC/4/37/At para 97



6. Domestic Decision

There are no domestic decisions relevant to SOGI issues.