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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**  
**ORGANIZATION OF AMERICAN STATES**

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**DWAYNE JONES,**

*Victim,*

–v.–

**JAMAICA,**

*Respondent.*

**Case No. 15.080**  
**Petition No. P-265-16**

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**BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER**

*Presented by:*

**TransWave Jamaica**  
**Coalition Advocating for Inclusion of Sexual Orientation**  
**Colours Caribbean**  
**Eastern Caribbean Alliance for Diversity and Equality**  
**Guyana Trans United**  
**United Caribbean Trans Network**

*Endorsed by:*

**Stanford Law School International Human Rights & Conflict Resolution Clinic**  
**University of Chicago Law School Global Human Rights Clinic**  
**University of Pennsylvania Carey Law School Transnational Law Clinic**

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## **I. Introduction**

### **A. Statement of Interest**

The undersigned are, collectively, TransWave Jamaica and its regional supporters, Jamaican and regional Lesbian, Gay, Bisexual, Transgender and Queer (hereinafter “LGBTQ”) organizations, and law school clinics.

Pursuant to Article 44 of the American Convention on Human Rights (hereinafter the “American Convention”) the undersigned Amici Curiae respectfully submit the following brief for consideration by the Inter-American Commission on Human Rights (hereinafter the “Commission” or the “IACHR”) in relation to the Petition filed by International Human Rights Advocates (“Petitioner”) relating to Jamaica’s failure to protect and investigate the murder of Dwayne Jones.

On July 22, 2013, Dwayne Jones, a sixteen-year-old transgender Jamaican child, was stabbed, shot, and run over by a vehicle after attending a party at a bar in Montego Bay, dying as a result of the violence she sustained. Despite 300 individuals reportedly attending the party where she was murdered, no arrests have been made in connection with her brutal attack and murder. Prior to her death, Dwayne Jones had been forced out of her family home due to discrimination on the basis of her gender identity. The case of Dwayne Jones is one example of the myriad of ways in which discrimination against transgender persons in Jamaica exposes them to violence and undermines their social and economic security. As such, Jamaica is violating its obligations under international law.

### **B. Relevant International Law**

Jamaica’s obligations arise from the American Convention on Human Rights and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (hereinafter also the “Convention of Belém do Pará”).<sup>1</sup> Specifically, Jamaica’s obligations, as they relate to the present petition filed in the case of Dwayne Jones and its duties to transgender individuals more generally, are to uphold the rights to life (Am. Conv. Art. 4), personal integrity (Am. Conv. Art. 5), privacy (Am. Conv. Art. 11), freedom of expression (Am. Conv. Art. 13), equal protection under the law (Am. Conv. Art. 24), as well as rights to judicial protection contained in Articles 8 and 25 of the American Convention. In addition, Jamaica is obligated under Article 19 of the American Convention to ensure every child is provided special measures of protection. As a member of the Organization of American States (hereinafter the “OAS”) and a signatory to the American Convention, Jamaica has further committed to adopting measures aimed at achieving the realization of economic, social, and educational rights set forth in the Protocol of Buenos Aires. Article 1(1) of the American Convention explicitly obligates Jamaica to respect the foregoing rights, and “to ensure to all persons subject to their jurisdiction the free and full

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<sup>1</sup> Jamaica signed and ratified the Convention of Belém do Pará in 2005. Organization of American States, “Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará): Status of signatories and ratifications,” accessed May 31, 2023, <https://www.oas.org/en/mesecvi/docs/signatories-table-en.pdf>.

exercise of those rights and freedoms, without any discrimination.” As set forth herein, Jamaica has failed in its obligations to ensure the protection and equal enjoyment of these rights as applied to transgender persons and particularly failed Dwayne Jones as a transgender minor.

Jamaica has additional obligations under Article 7 (a) and (b) of the Convention of Belém do Pará to ensure governmental authorities and institutions refrain from engaging in any act or practice of violence against women, and to apply due diligence to prevent, investigate and impose penalties for the death of Dwayne Jones. The Inter-American Court of Human Rights (hereinafter the “Court” or the “IACtHR”), in the case of *Vicky Hernandez v. Honduras*, affirmed that the Convention of Belém do Pará applies to transgender women.<sup>2</sup> The Court recognized that violence against transgender women is inherently linked to their gender identity and is therefore covered by Article 1 of the Convention of Belém do Pará, which specifically recognizes the gender-based nature of violence against women. Article 9 of the Convention of Belém do Pará emphasizes that States should consider the vulnerability of women to violence, and the jurisprudence of the IACtHR has included gender identity as a contributing factor to the vulnerability of women, particularly in cases involving transgender women.<sup>3</sup> By doing so, the IACtHR has acknowledged that gender identity intersects with other social characteristics, exacerbating the risk of gender-based violence. Additionally, the Court has consistently affirmed that any discriminatory law, act, or practice based on an individual’s sexual orientation or gender identity is strictly prohibited.<sup>4</sup>

### C. Facts of the Petition

Sixteen-year-old Dwayne Jones was attacked and murdered on July 22, 2013.<sup>5</sup> She had attended the party wearing women’s clothing, alongside two other transgender teenagers.<sup>6</sup> After dancing, Dwayne Jones was confronted by a group of men seeking to know her

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<sup>2</sup> Inter-American Court of Human Rights, *Case of Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, Judgment of March 26, 2021, ¶ 126-134, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_422\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_422_ing.pdf).

<sup>3</sup> Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶¶ 128-129.

<sup>4</sup> Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶ 67.

<sup>5</sup> “Justice Minister condemns killing of St. James cross-dresser,” *Jamaican Observer*, July 29, 2013, <https://www.jamaicaobserver.com/news/justice-minister-condemns-killing-of-st-james-cross-dresser/>; David McFadden, “In Jamaica, transgender teen killed by mob,” *Associated Press*, August 11, 2013, <http://bigstory.ap.org/article/jamaica-transgender-teen-murdered-mob>; David McFadden, “In Jamaica, transgender teen murdered by mob,” *USA Today*, August 11, 2013, <https://www.usatoday.com/story/news/world/2013/08/11/jamaica-transgender-teen-murdered-by-mob/2639995/>; Dan Littauer, “Cross-dressing gay teen hacked, stabbed to death by Jamaican mob,” *LGBTQ Nation*, July 23, 2013, <http://www.lgbtqnation.com/2013/07/cross-dressing-gay-teen-hacked-stabbed-to-death-by-jamaican-mob/>.

<sup>6</sup> “Justice Minister condemns killing of St. James cross-dresser”; McFadden, “Transgender teen killed by mob”; McFadden, “Transgender teen murdered by mob”; Littauer, “Cross-dressing gay teen hacked, stabbed to death.”

gender.<sup>7</sup> Dwayne Jones informed the group she was a woman. Enraged, someone in the group snapped her bra strap.<sup>8</sup> Dwayne Jones ran down the street away from the bar, but the group of men soon caught up and beat her.<sup>9</sup> A crowd of partygoers joined in the violence, forming a mob.<sup>10</sup> Dwayne Jones was beaten and hacked at with knives for more than two hours before finally succumbing to her injuries during a sustained bout of violence.<sup>11</sup> Dwayne Jones's body was run over by a car and then dumped alongside a nearby road, where she was found the next day by the police.<sup>12</sup> To date, even though there were reportedly 300 individuals attending the party where Dwayne Jones was murdered, no arrests have been made in connection with the crime.<sup>13</sup>

The case of Dwayne Jones is not an isolated incident. Discrimination against LGBTQ persons in Jamaica exposes them to violence and undermines their social and economic security. Discrimination and violence against the LGBTQ community in Jamaica is a widespread issue that has been extensively documented by national, regional, and international human rights bodies and NGOs. A 2005 report of the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions provides an overview of the history of violence and frequent mob attacks against LGBTQ individuals in Jamaica.<sup>14</sup> Recent statistics reported by Equality for All Foundation Jamaica (hereinafter "Equality for All" and "Jamaican Forum for Lesbians, All-sexuals and Gays" or "J-FLAG") further indicate a disturbing trend of violence and discrimination against the LGBTQ community.<sup>15</sup>

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<sup>7</sup> "Justice Minister condemns killing of St. James cross-dresser"; McFadden, "Transgender teen killed by mob"; McFadden, "Transgender teen murdered by mob"; Littauer, "Cross-dressing gay teen hacked, stabbed to death."

<sup>8</sup> "Justice Minister condemns killing of St. James cross-dresser"; McFadden, "Transgender teen killed by mob"; McFadden, "Transgender teen murdered by mob"; Littauer, "Cross-dressing gay teen hacked, stabbed to death."

<sup>9</sup> "Justice Minister condemns killing of St. James cross-dresser"; McFadden, "Transgender teen killed by mob"; McFadden, "Transgender teen murdered by mob"; Littauer, "Cross-dressing gay teen hacked, stabbed to death."

<sup>10</sup> "Justice Minister condemns killing of St. James cross-dresser"; McFadden, "Transgender teen killed by mob"; McFadden, "Transgender teen murdered by mob"; Littauer, "Cross-dressing gay teen hacked, stabbed to death."

<sup>11</sup> "Justice Minister condemns killing of St. James cross-dresser"; McFadden, "Transgender teen killed by mob"; McFadden, "Transgender teen murdered by mob"; Littauer, "Cross-dressing gay teen hacked, stabbed to death."

<sup>12</sup> "Justice Minister condemns killing of St. James cross-dresser"; McFadden, "Transgender teen killed by mob"; McFadden, "Transgender teen murdered by mob"; Littauer, "Cross-dressing gay teen hacked, stabbed to death."

<sup>13</sup> "Justice Minister condemns killing of St. James cross-dresser"; McFadden, "Transgender teen killed by mob"; McFadden, "Transgender teen murdered by mob"; Littauer, "Cross-dressing gay teen hacked, stabbed to death."

<sup>14</sup> *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, E/CN.4/2005/7/Add.1, March 17, 2005, 141-44, <https://digitallibrary.un.org/record/544564?ln=en>. Multiple other UN Special Rapporteurs have expressed concern about the targeting of LGBTQ persons in Jamaica. See, generally: International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System*, 2007, <https://www.refworld.org/pdfid/4ad5b5ab2.pdf>.

<sup>15</sup> Carla Moore, *The Jamaican LGBT Community Experience and Needs Assessment Survey Results*, Equality for All Foundation Jamaica, December 2019, 20-21, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/The-Jamaican-LGBT-Community-Experience-and-Needs-Assessment-Survey-Results.pdf>.

Equality for All reported that a combination of indifference by law enforcement, fear, lack of confidence in a positive outcome, concerns about victimization or unnecessary attention, and a lack of knowledge on how and where to seek support has prevented 73% of LGBTQ persons from reporting incidents of violence and discrimination.<sup>16</sup> Additionally, some of the victims were children who did not know where to seek support.<sup>17</sup> The report further revealed the near-universal experiences of LGBTQ persons feeling unsafe in public spaces because of violence, verbal assaults, threats, and discrimination.<sup>18</sup> In terms of homelessness, the report found that 1.4% of participants were homeless or displaced at the time of the survey, and 20.9% had experienced homelessness at some point in their lives.<sup>19</sup> From a regional lens, a report by Outright International and the United Caribbean Trans Network surveying trans and gender-diverse people from eleven Caribbean countries revealed that 28% of respondents had been homeless at some point in their lives.<sup>20</sup>

#### **D. Background of Continued Criminalization of LGBTQ Persons in Jamaica**

The facts of the Dwayne Jones murder fall within a broader context of criminalization and legal discrimination toward LGBTQ persons, especially transgender persons, in Jamaica. Despite guaranteeing formal constitutional equality before the law for all people, Jamaica criminalizes consensual homosexual sexual activity. The Jamaican Constitution's equality clause grants "the right to equality before the law" without any limitations on application to certain classes.<sup>21</sup> The same section ensures that "no organ of the State shall take any action which abrogates, abridges or infringes those rights."<sup>22</sup> Nonetheless, consensual homosexual sexual activity remains outlawed under the 1864 Offences against the Person Act (hereinafter the "OAPA"), which was adopted during the British colonial period and modeled after the equivalent British law.<sup>23</sup> Sections 76, 77, and 79 of the OAPA make acts of "buggery" and "gross indecency" between males illegal and section 80 gives police significant discretion to arrest suspected violators without a warrant.<sup>24</sup> Because "sexual offences" are carved out from the scope of the Constitution's Fundamental Rights and Freedoms chapter, these laws cannot be challenged in courts for violating the Constitution's human rights guarantees.<sup>25</sup> This regime clearly constitutes a *de jure* system of discrimination against LGBTQ people in Jamaica.

More recent legislative developments have further criminalized Jamaica's LGBTQ population. In 2009, a new law was passed to deal primarily with the prosecution of rape

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<sup>16</sup> Moore, *Jamaican LGBT Community Experience and Needs Assessment*, 23.

<sup>17</sup> Moore, *Jamaican LGBT Community Experience and Needs Assessment*, 23.

<sup>18</sup> Moore, *Jamaican LGBT Community Experience and Needs Assessment*, 60.

<sup>19</sup> Moore, *Jamaican LGBT Community Experience and Needs Assessment*, 61.

<sup>20</sup> Outright International and United Caribbean Trans Network, *Discrimination at Every Turn: The Experience of Gender Diverse People in Eleven Caribbean Countries*, September 2022, 3, [https://outrightinternational.org/sites/default/files/2022-09/CaribbeanTrans\\_092022\\_1.pdf](https://outrightinternational.org/sites/default/files/2022-09/CaribbeanTrans_092022_1.pdf).

<sup>21</sup> Jamaica Constitution, sec. 13.3.g.

<sup>22</sup> Jamaica Constitution, sec. 13.2.b.

<sup>23</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 2011, 3, [https://www2.ohchr.org/english/bodies/hrc/docs/ngos/lgbt\\_jamaica103.pdf](https://www2.ohchr.org/english/bodies/hrc/docs/ngos/lgbt_jamaica103.pdf).

<sup>24</sup> The Offences Against the Person Act, sec. 76-77, 79-80.

<sup>25</sup> Jamaica Constitution, sec. 13.12.a.

and other offenses.<sup>26</sup> This law includes a provision forcing those convicted of violating the anti-buggery laws to register as sex offenders.<sup>27</sup> Further, the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, while expanding access to other civil and political rights denied during British colonial rule, preserved these discriminatory anti-buggery laws.<sup>28</sup> These changes also included a new constitutional anti-discrimination clause that limits the definition of gender-based discrimination to the gender binary,<sup>29</sup> which precludes judicial interpretation of the Charter as including protections based on sexual orientation or expansive gender identity.<sup>30</sup> For many years, Jamaica had a provision known as the “general savings clause” which protected colonial laws from being declared inconsistent with the constitution.<sup>31</sup> This clause, also found in the first constitutions of Bahamas, Barbados, Guyana, Jamaica, and Trinidad and Tobago, was held in 2004 by the apex court of these countries, the Judicial Committee of the Privy Council (hereinafter “the JCPC”), to shield colonial laws in force regardless of whether they violated the rights guaranteed in the constitution.<sup>32</sup> The 2011 amendments repealed this provision<sup>33</sup> but maintained the protection for provisions concerning “sexual offences.”<sup>34</sup> Such efforts “may well heighten [the] sense of inviolability” of Jamaica’s anti-buggery laws by reaffirming their significance in the new Constitution.<sup>35</sup>

Although the OAPA only proscribes male homosexual conduct, lesbians, bisexual women, and transgender people remain vulnerable to arrest, discrimination, and violence. Lesbian and bisexual women have been arrested for homosexual conduct even though this behavior is not formally criminalized.<sup>36</sup> These groups are also susceptible to sexual violence, particularly “corrective rape” where men try to forcibly “cure” a woman of her queer sexual

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<sup>26</sup> The Sexual Offences Act of 2009.

<sup>27</sup> The Sexual Offences Act of 2009, sec. 29-33.

<sup>28</sup> The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act; Tracy Robinson, “New-Old Law in the Postcolony: Regulating Sex in the Anglophone Caribbean,” in *Citizenship on the Edge*, eds. Nancy J. Hirschmann and Deborah A. Thomas (Philadelphia: University of Pennsylvania Press, 2022), 79.

<sup>29</sup> Jamaica Constitution, sec. 13.3.i.i.

<sup>30</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 3; Robinson, “New-Old Law in the Postcolony,” 77.

<sup>31</sup> Robinson, “New-Old Law in the Postcolony,” 76.

<sup>32</sup> *Boyce v the Queen* [2004] UKPC 32, ¶ 1 (applied in *Watson v the Queen* [2004] UKPC 34 and *Matthew v State of Trinidad and Tobago* [2004] UKPC 33). See also “special savings clause” in relation to punishments, *Pinder v R* [2002] UKPC 46 (holding that colonial laws never die in that they may be repealed but reinstated at any time by the parliaments of these nations. More disturbingly, upon being reinstated, the reinstated law regains colonial status, thus becoming again immune from judicial scrutiny).

<sup>33</sup> Jamaica Constitution, sec. 26.

<sup>34</sup> Jamaica Constitution, sec. 13.12.a.

<sup>35</sup> Robinson, “New-Old Law in the Postcolony,” 77.

<sup>36</sup> Inter-American Commission on Human Rights, *Report on the situation of Human Rights in Jamaica*, 2012, ¶ 287, <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>; Equality for All Foundation Jamaica, *(re)Presenting and Redressing LGBT Homelessness in Jamaica*, July 2014, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/rePresenting-and-Redressing-LGBT-Homelessness-in-Jamaica-JFLAG.pdf>.

orientation.<sup>37</sup> Threats of sexual violence are commonplace and are often accompanied by death threats.<sup>38</sup> Trans and gender non-conforming people, who are also not mentioned in the OAPA, are perhaps the most unsafe in public spaces. Because transgender identity and homosexuality are often conflated, members of this group who are publicly visible and the OAPA "contribute[s] to stigma, discrimination, and violence against them."<sup>39</sup> They face physical and sexual violence and discrimination in employment and access to public services.<sup>40</sup>

For trans and gender non-conforming people, there is no form of legal gender recognition.<sup>41</sup> The *de jure* position of trans people across the region is found in the British common law cases *Corbett v Corbett*<sup>42</sup> and *R v Tan and Others*.<sup>43</sup> Together, these cases establish that sex assigned at birth is determinative of the legal status accorded to persons within the law.<sup>44</sup> This consequently impacts how trans and gender non-conforming people are treated by gender-specific laws such as sexual offenses and family law legislation.

Despite recent shifts within the law in some countries within the English-speaking Caribbean, the continued existence of criminalizing laws and the lack of protection against discrimination create a context in which LGBTQ people are less likely to report their experiences of violence and discrimination as noted above. In TransWave Jamaica's 2022 Human Rights Violation Report, they noted that of the 38 focus group participants, almost all indicated receiving little to no assistance from police officers.<sup>45</sup> Across the Caribbean region, 59% of trans and gender-diverse people surveyed by Outright International and the United Caribbean Trans Network indicated experiencing police violence.<sup>46</sup>

Jamaica has consistently rebuffed allegations that LGBTQ people in the country face legal discrimination. During both its 2010 and 2015 Universal Periodic Reviews before the United Nations Human Rights Committee, Jamaica has asserted that the government "does

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<sup>37</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report*, 2015, 2, [http://rmozone.com/snapshots/2016/05/docs/INT\\_CCPR\\_ICO\\_JAM\\_22756-00.pdf](http://rmozone.com/snapshots/2016/05/docs/INT_CCPR_ICO_JAM_22756-00.pdf); Inter-American Commission on Human Rights, *Report on the situation of Human Rights in Jamaica*, ¶ 287.

<sup>38</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report*, 4-5.

<sup>39</sup> Lamar Grant, *Issue Brief: Dissecting the Offences against the Person Act (1864)*, TransWave Jamaica, May 2023, 2, [https://issuu.com/transwaveja/docs/issue\\_brief\\_dissecting\\_the\\_offences\\_against\\_the\\_pe](https://issuu.com/transwaveja/docs/issue_brief_dissecting_the_offences_against_the_pe).

<sup>40</sup> Inter-American Commission on Human Rights, *Report on the situation of Human Rights in Jamaica*, ¶ 288; Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations against Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 4-5, 12-14.

<sup>41</sup> TransWave Jamaica, *Health & Wellness of the Trans, Gender Non-Conforming & Non-Binary Communities in Jamaica*, April 18, 2023, 15, [https://issuu.com/transwaveja/docs/desk\\_review](https://issuu.com/transwaveja/docs/desk_review).

<sup>42</sup> *Corbett v Corbett*, [1970] 2 All E.R. 33, <https://sex-matters.org/wp-content/uploads/2021/01/Corbett-v-Corbett-1.pdf>.

<sup>43</sup> *R v Tan and Others*, [1983] QBD 1053, <http://www.pfc.org.uk/caselaw/R%20v%20Tan%20and%20others.pdf>.

<sup>44</sup> *Corbett v Corbett* [1970] 2 All E.R. 33, 10-12, 20; *R v Tan and Others* [1983] QBD 1053, 11-12.

<sup>45</sup> Lamar Grant, *Human Rights Violation Report*, TransWave Jamaica, 2022, 7, 14, [https://issuu.com/transwaveja/docs/human\\_rights\\_violation\\_report\\_2022\\_1](https://issuu.com/transwaveja/docs/human_rights_violation_report_2022_1).

<sup>46</sup> Outright International and United Caribbean Trans Network, *Discrimination at Every Turn*, 18-19.



not condone discrimination or violence ... against any person or group because of their sexual orientation”<sup>47</sup> and that “[t]here is no legal discrimination against persons on the grounds of their sexual orientation.”<sup>48</sup> The IACHR has disagreed with the position taken by the Jamaican government<sup>49</sup> and condemned the *de jure* discrimination enabled by the country’s laws. It has previously ruled in *Gareth Henry and Simone Carline Edwards v. Jamaica* and *T.B and S.H v. Jamaica* that the anti-buggery laws violate the rights to humane treatment (Am. Conv. Art. 5.1), privacy (Am. Conv. Art. 11), movement and residence (Am. Conv. Art. 22.1), equal protection (Am. Conv. Art. 24), judicial protection (Am. Conv. Art. 25.1), and health (Am. Conv. Art. 26).<sup>50</sup> Consequently, the Commission has recommended in these cases that Jamaica repeal the anti-buggery laws contained in the Offences against the Person Act,<sup>51</sup> with other international bodies and civil society organizations echoing this request.<sup>52</sup>

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<sup>47</sup> “Human Rights Council: Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Jamaica,” United Nations Human Rights Council, 2010, ¶ 10, <https://www.ohchr.org/en/hr-bodies/upr/jm-index>.

<sup>48</sup> “Human Rights Council: Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Jamaica,” United Nations Human Rights Council, 2015, ¶ 103, <https://www.ohchr.org/en/hr-bodies/upr/jm-index>.

<sup>49</sup> Despite the government’s official position in front of various human rights bodies, there is a diversity of views among state actors, some of whom are more supportive of the LGBTQ community. Jamaican civil society organizations have made important progress in collaborating with government officials to meet the needs of LGBTQ people. For example, J-FLAG has worked with the Ministry of Health and Wellness to understand deficits in government health service centers, with development practitioners in government to increase awareness of LGBTQ youth issues, and with government officials to improve the frameworks related to reporting and redressing human rights violations. Equality for All Jamaica Foundation, *2019 Annual Report*, 2019, 12, 15, 16, <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Annual-Report-2019.pdf>.

<sup>50</sup> Inter-American Commission of Human Rights, *Case of T.B and S.H v. Jamaica*, Merits (Publication), Report No. 401/20, December 31, 2020, ¶ 135, [https://www.oas.org/en/iachr/decisions/2020/JM\\_13.095\\_EN.PDF](https://www.oas.org/en/iachr/decisions/2020/JM_13.095_EN.PDF); *Case of Gareth Henry and Simon Carline Edwards v. Jamaica*, Merits (Publication), Report No. 400/20, Inter-American Commission of Human Rights, December 31, 2020, ¶ 120, [https://www.oas.org/en/iachr/decisions/2020/JM\\_13.637\\_EN.PDF](https://www.oas.org/en/iachr/decisions/2020/JM_13.637_EN.PDF).

<sup>51</sup> Inter-American Commission on Human Rights, *T.B and S.H v. Jamaica*, Merits (Publication), Report No. 401/20, ¶ 135; Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits (Publication), Report No. 400/20, ¶ 120.

<sup>52</sup> Inter-American Commission of Human Rights, *Advances and Challenges towards the Recognition of Rights of LGBTI Persons in the Americas*, 2018, ¶ 245, <https://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>; Inter-American Commission on Human Rights, *Violence Against LGBTI Persons*, 2015, ¶¶ 65, 85, <https://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>; United Nations Committee on Economic, Social and Cultural Rights, “Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftieth session (29 April–17 May 2013),” 2013, ¶ 9, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/444/41/PDF/G1344441.pdf?OpenElement>; Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 23; Inter-American Commission on Human Rights, *Report on the situation of Human Rights in Jamaica*, ¶ 305; Human Rights Watch, *Not Safe at Home: Violence and Discrimination Against LGBT People in Jamaica*, 2014, 7, <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica>; Human Rights First, “*The World As It Should Be*”: *Advancing the Human Rights of LGBT People in Jamaica*, 2015, 22, <https://humanrightsfirst.org/wp-content/uploads/2022/11/HRF-Jamaica-Report-final.pdf>.

Moreover, there is growing acknowledgment of norms of equality in the Caribbean. In *McEwan and Others v. Attorney General of Guyana*, the Caribbean Court of Justice noted:

The constitutional promise of equality prohibits the State from prescribing legislative distinctions or other measures that treat a group of persons as second-class citizens or in any way that otherwise offends their dignity as human beings.

[...]

A society which promotes respect for human rights is one which supports human development and the realisation of the full potential of every individual. The hostility and discrimination that members of the LGBTI community face in Caribbean societies are well-documented. They are disproportionately at risk for discrimination in many aspects of their daily lives, including employment, public accommodation, and access to State services.<sup>53</sup>

It may be challenging to nullify the anti-buggery laws. Like many other Caribbean countries, Jamaica's highest appellate court is the JCPC, which uses judges from the Supreme Court of the United Kingdom.<sup>54</sup> This court is another remnant of British colonialism in the Caribbean and recently reaffirmed the validity of using savings law clauses to immunize certain laws from being declared unconstitutional.<sup>55</sup> In some cases, the JCPC has circumvented savings law clauses if, for example, the new law retrospectively modifies the old law so that it is no longer "saved."<sup>56</sup> Since many pre-existing colonial laws cover discrimination as well as criminalization,<sup>57</sup> this system significantly threatens the realization of the human rights of vulnerable minority groups.<sup>58</sup> The IACtHR has already addressed this issue, ruling that the use of savings law clauses to shield laws that violate fundamental rights from judicial scrutiny is a violation of the American Convention.<sup>59</sup>

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<sup>53</sup> *McEwan and Others v. Attorney General of Guyana* [2018] CCJ 30 (AJ), ¶ 66, 70.

<sup>54</sup> "The Court Structure and Hierarchy," The Supreme Court of Jamaica, Government of Jamaica, last modified 2022, <https://supremecourt.gov.jm/content/court-structure-and-hierarchy>.

<sup>55</sup> *Chandler v The State No 2 (Trinidad and Tobago)* [2022] UKPC 19, ¶¶ 22-25, <https://www.jcpc.uk/cases/docs/jcpc-2020-0051-judgment.pdf>.

<sup>56</sup> *Tafari Morrison v The King* [2023] UKPC 14, ¶ 37.

<sup>57</sup> See Office of the Attorney General & Legal Affairs, "AG Talks - Ep.3 "What does the AG do?,"" interview by Rhoda Bharath, *AG Talks*, July 11, 2021, audio and video, 16:10-19:35, <https://youtu.be/ABBzVPmRRDI?t=970>.

<sup>58</sup> Leonardo Raznovich, "Privy Council's Errors of Law Hinder Progress of LGBTI Rights in the Caribbean," *European Human Rights Law Review* no. 1 (February 2022): 65.

<sup>59</sup> Inter-American Court of Human Rights, *Case of Boyce et al. v. Barbados*, Preliminary objection, merits, reparations and costs, Judgment of November 20, 2007, ¶¶ 78-80, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_169\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_169_ing.pdf).

## II. LGBTQ Persons in Jamaica Face Systemic Discrimination, To Which Transgender Persons Are Particularly Vulnerable

Jamaica's failure to ensure transgender persons equal treatment under the law, and equal enjoyment of all rights under the American Convention constitutes a breach of its obligations under Articles 1(1), 24, and 26 of the American Convention.

Article 1(1) of the American Convention establishes a general obligation for States to uphold and protect the rights enshrined therein "without any discrimination." Any treatment deemed discriminatory in relation to the exercise of any rights protected by the treaty is inherently incompatible with international human rights law, as repeatedly recognized by the Inter-American Court on Human Rights.<sup>60</sup> Jamaica's obligation extends to protecting individuals from actions and practices of third parties that create, maintain, or encourage discrimination with the State's tolerance or acquiescence.<sup>61</sup> Article 1(1) of the American Convention identifies specific characteristics that distinguish victims of discrimination from others, but that list is not exhaustive.<sup>62</sup> The IACtHR has held that sexual orientation, gender identity, and gender expression are protected categories<sup>63</sup> and has recognized that LGBTQ people in the Americas have historically been victims of structural discrimination, oppression, stigmatization, and diverse forms of violence.<sup>64</sup>

Article 24 of the American Convention extends the right to non-discrimination to the domestic laws of a State Party, and safeguards the right to "equal protection of the law." This provision not only prohibits *de jure* discrimination with regard to the rights protected by the American Convention but also extends to the constitution and all laws enacted by the State and their application.

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<sup>60</sup> Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶¶ 64-65.

<sup>61</sup> Inter-American Court of Human Rights, *Case of Azul Rojas Marín et al. v. Peru*, Preliminary objections merits, reparations and costs, Judgment of March 12, 2020, ¶ 89, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_402\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_ing.pdf).

<sup>62</sup> Inter-American Court of Human Rights, *Case of Azul Rojas Marín et al. v. Peru*, Preliminary objections merits, reparations and costs, Judgment of March 12, 2020, ¶ 89, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_402\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_ing.pdf).

<sup>63</sup> The Inter-American Court of Human Rights has explained that gender expression is understood to be the outward manifestation of a person's gender by physical aspects, which may include dress, hair style, or the use of cosmetics, or by mannerisms, speech, personal behavior or social interaction, and names or personal references. A person's gender expression may or may not correspond to their self-perceived gender identity. Inter-American Court of Human Rights, Gender Identity, and Equality and Non-Discrimination of Same-Sex Couples (Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in Relation to Article 1, of the American Convention on Human Rights), Advisory Opinion OC-24/17, (Ser. A) No. 24, November 24, 2017, ¶ 32(g); Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶ 67.

<sup>64</sup> Inter-American Court of Human Rights, *Azul Rojas Marín et al. v. Peru*, Preliminary objections merits, reparations and costs, ¶ 90; Inter-American Court of Human Rights, *Case of Atala Ríffo and daughters v. Chile*, Merits, reparations and costs, Judgment of February 24, 2012, ¶ 93, [https://corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf); Inter-American Court of Human Rights, Advisory Opinion OC-24/17, ¶ 78; Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶ 67.

Discrimination against LGBTQ individuals manifests in various ways, as illustrated in the case of Dwayne Jones. Dwayne Jones experienced violence, economic insecurity, and homelessness.<sup>65</sup> Her case serves as a glaring example of the discrimination faced by transgender persons in Jamaica and throughout the Caribbean. Further, it highlights the multifaceted factors that contribute to the mistreatment and harm experienced by the transgender community, in the public and private spheres.

Article 26 of the American Convention imposes an obligation on State Parties to take measures aimed at gradually achieving the full realization of rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States (hereinafter the “OAS Charter” or the “Charter”), as amended by the Protocol of Buenos Aires. The IACtHR has confirmed its jurisdiction to adjudicate violations of Article 26 of the American Convention, emphasizing that it safeguards economic, social, cultural, and environmental rights derived from the OAS Charter.<sup>66</sup>

#### **A. Transgender Persons Face Housing Insecurity as a Result of Systemic Discrimination**

Displacement, housing insecurity, and overall economic insecurity contribute to the rights abuses experienced by LGBTQ persons and ultimately led up to the murder of Dwayne Jones. These factors place LGBTQ persons—particularly transgender people and minors—at a heightened risk of violence. Eviction and homelessness disproportionately affect LGBTQ minors in Jamaica.<sup>67</sup> LGBTQ minors are often cruelly expelled from their own households and adults face eviction and other discriminatory exclusion from housing. Many LGBTQ people experience effective homelessness at some point in their lives.<sup>68</sup>

This has a profound impact on the lives of transgender Jamaicans. Extensive interviews conducted by human rights organizations shed light on the experiences of LGBTQ individuals who have been forcibly displaced.<sup>69</sup> Interviewed individuals were subjected to expulsion from their homes by family members, forced to leave their communities due to threats of violence, and in some instances, violently attacked and compelled to flee. Some adults were evicted based on their sexual orientation, targeted with false accusations of sexual abuse involving minors, and confronted with threats from their neighbors. Displaced LGBTQ persons were left with no safe haven, confronted with more discrimination, violence, and harassment, exacerbating their vulnerability.

Police harassment has contributed to the social exclusion and vulnerability of LGBTQ people, especially with regard to housing insecurity. Police have hounded housing insecure LGBTQ persons, evicting them from abandoned buildings and forcing them to live in storm

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<sup>65</sup> Human Rights Watch, *Not Safe at Home*, 1.

<sup>66</sup> Inter-American Court of Human Rights, *Indigenous Communities Members of the Lhaka Honhat Association v. Argentina*, Merits, reparations and costs, Judgment of February 6, 2020, ¶ 195. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf).

<sup>67</sup> Human Rights Watch, *Not Safe at Home*, 45.

<sup>68</sup> Human Rights Watch, *Not Safe at Home*, 3-4.

<sup>69</sup> Human Rights Watch, *Not Safe at Home*, 3-7.

drains or gullies.<sup>70</sup> Police have demolished buildings after expelling LGBTQ inhabitants “so that the youngsters could not ‘re-infest’ them.”<sup>71</sup> On October 15, 2013, police raided a gully in New Kingston where gay men were living. The officers confiscated and burned the men’s clothes before “warning that they should not be seen in the area again.”<sup>72</sup> The next day, the men went to the police station to report the attack, where officers said “they could provide no assistance because the men could not provide the names and addresses of their attackers.”<sup>73</sup>

Among the most vulnerable persons within the LGBTQ community in Jamaica are transgender children and young adults who have been abandoned by their own families and left to fend for themselves on the streets. The tragic case of Dwayne Jones serves as a poignant example of the perils faced by these marginalized youth. At the young age of 12, she was homeless, and at the age of 16, she was brutally murdered.

Regrettably, Dwayne Jones’s story is not an anomaly. Human rights organizations have brought attention to numerous comparable accounts where LGBTQ minors have faced homelessness, discrimination, and violence.<sup>74</sup> These traumatized youth are forced to flee their own homes and seek refuge in the unforgiving streets or desperate living conditions, such as residing in sewers.

## **B. Transgender Persons Face Educational and Employment Insecurity as a Result of Discrimination**

Transgender persons in Jamaica face severe discrimination in the education system, which aggravates the harm they may experience due to housing insecurity. The lack of a unified approach to protecting LGBTQ students has resulted in many cases of homophobic and transphobic bullying in schools. In fact, 43% of LGBTQ Jamaicans have indicated that they have been bullied on the basis of their sexual orientation or gender identity in school.<sup>75</sup> Such bullying can lead to public humiliation or worse, incidents of serious physical violence.<sup>76</sup> In 2012, at a public forum hosted by J-FLAG, Education Minister Ronald Thwaites explained his Ministry aimed to provide a safe education to LGBTQ students.<sup>77</sup> To date, there has been no clear policy response to the prevalence of bullying in schools.<sup>78</sup>

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<sup>70</sup> Human Rights First, *The World As It Should Be*, 8.

<sup>71</sup> Colin Stewart, “Jamaica needs urgent action to save LGBT people’s lives,” *Erasing 76 Crimes*, September 14, 2013, <https://76crimes.com/2013/09/14/jamaica-needs-urgent-action-to-save-lgbt-peoples-lives>.

<sup>72</sup> Colin Stewart, “Jamaica police join attacks on homeless LGBT men,” *Erasing 76 Crimes*, October 17, 2013, <https://76crimes.com/2013/10/17/jamaica-police-join-attacks-on-homeless-lgbt-men>.

<sup>73</sup> Colin Stewart, “Anti-gay Jamaican police must end their hostile acts,” *Erasing 76 Crimes*, October 16, 2013, <https://76crimes.com/2013/10/16/anti-gay-jamaican-police-must-end-their-hostile-acts>.

<sup>74</sup> Human Rights Watch, *Not Safe at Home*, 45.

<sup>75</sup> Moore, *The Jamaican LGBT Community Experience and Needs Assessment Survey Results*, 30.

<sup>76</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 22.

<sup>77</sup> Human Rights Watch, *Not Safe at Home*, 59.

<sup>78</sup> See Moore, *The Jamaican LGBT Community Experience and Needs Assessment Survey Results*, 35.

The discrimination that transgender people in Jamaica face in access to employment and in the workplace exacerbates issues related to housing insecurity. In terms of access to employment, public service employers are prohibited from discriminating against employees based on their sexual orientation, but not based on their gender identity.<sup>79</sup> In the private sector, there are no prohibitions against discrimination based on sexual orientation or gender identity.<sup>80</sup> Transgender people are sometimes turned away by employers because their state identification often does not match their assumed gender identity,<sup>81</sup> leading many to turn to informal employment or sex work.<sup>82</sup> In other cases, transgender persons who have lost employment due to their gender identity must rely on freelance work with foreign companies.<sup>83</sup> Discrimination in the workplace is also a major issue.<sup>84</sup> Data collected by J-FLAG suggests that those who are more open about their sexual or gender diversity are more likely to lose their jobs.<sup>85</sup> In the recent Needs Assessment conducted by J-FLAG, it was noted that 34% of LGBTQ Jamaicans had negative experiences in the workplace because of their identity including discrimination, verbal harassment, and, for a few, termination.<sup>86</sup> Reports collected by human rights observers confirm this by showing how employers often fire their employees based on their assumed sexuality or gender identity, and that many who lose their jobs do not believe they can successfully claim wrongful dismissal.<sup>87</sup> As a result of this instability in employment, many transgender people in Jamaica become effectively homeless.<sup>88</sup> For example, in a 2019 survey conducted by TransWave Jamaica with 35 members of the trans and gender non-conforming community, more than half of the respondents were unemployed (51.4%).<sup>89</sup> Across the region, a report by Outright International and United Caribbean Trans Network noted that 42% of 118 trans and gender-diverse people surveyed experienced unemployment.<sup>90</sup>

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<sup>79</sup> *Staff Orders for the Public Service*, 2004, sec. 13.1, [http://www.oas.org/juridico/spanish/jam\\_res29.pdf](http://www.oas.org/juridico/spanish/jam_res29.pdf).

<sup>80</sup> Human Rights Watch, *Not Safe at Home*, 42.

<sup>81</sup> Inter-American Commission on Human Rights, *Report on the situation of Human Rights in Jamaica*, ¶ 288.

<sup>82</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 15.

<sup>83</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 14.

<sup>84</sup> Human Rights Watch, *Not Safe at Home*, 72.

<sup>85</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 14.

<sup>86</sup> Moore, *The Jamaican LGBT Community Experience and Needs Assessment Survey Results*, 42.

<sup>87</sup> Human Rights Watch, *Not Safe at Home*, 42-43.

<sup>88</sup> Human Rights Watch, *Not Safe at Home*, 3.

<sup>89</sup> TransWave Jamaica, *Trans Economic Survivability in Jamaica*, December 9, 2019, 12, [https://issuu.com/transwaveja/docs/issuu\\_-\\_stonewall\\_transwave\\_trans\\_economic\\_surviva](https://issuu.com/transwaveja/docs/issuu_-_stonewall_transwave_trans_economic_surviva); TransWave Jamaica, *Health & Wellness of the Trans, Gender Non-Conforming & Non-Binary Communities in Jamaica*, 11.

<sup>90</sup> Outright International and United Caribbean Trans Network, *Discrimination at Every Turn*, 2022, 3, [https://outrightinternational.org/sites/default/files/2023-04/CarribbeanTrans\\_Revised\\_Outright\\_International\\_1.pdf](https://outrightinternational.org/sites/default/files/2023-04/CarribbeanTrans_Revised_Outright_International_1.pdf).

### C. The Effects of Systemic Anti-LGBTQ Discrimination Are Particularly Harmful To Minors, Especially Transgender Children

As a State Party to the American Convention, Jamaica has a legal obligation to protect children from mistreatment, in accordance with Article 19, in conjunction with Article 1(1). Article 19 states that every “child has the right to the measures of protection required by [their] condition as a minor on the part of [their] family, society, and the State.” This obligation requires Jamaica to take positive steps to safeguard children against mistreatment and abandonment, whether in their dealings with public officials or in their interactions with individuals or non-State entities.<sup>91</sup>

The IACtHR has looked to the United Nations Convention on the Rights of the Child (hereinafter the “CRC”) in interpreting the scope of a country’s obligations under Articles 19 and 28.<sup>92</sup> The CRC sets heightened standards for the protection of children against violence.<sup>93</sup> Of particular relevance to the present petition are provisions specific to non-discrimination, special assistance for children without a family environment, the guarantee of survival and development of the child, the right to an adequate standard of living, and the social rehabilitation of all abandoned or exploited children.<sup>94</sup>

In its General Comment No. 13, the Committee on the Rights of the Child emphasized the need for States to pay special attention to violence against children, whether perpetrated by the State, within the family, or at school.<sup>95</sup> The Comment clarifies that States have special obligations to fulfill their responsibilities toward children, including due diligence and the obligation to prevent violence or violations of human rights, the obligation to protect child victims from human rights violations, the obligation to investigate and punish those responsible for human rights violations, and the obligation to provide access to remedies for human rights violations.<sup>96</sup> States parties must also ensure that all persons responsible for preventing, protecting from, and responding to violence within their work contexts, including those in the justice systems, address the needs and respect the rights of children.<sup>97</sup>

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<sup>91</sup> Inter-American Court of Human Rights, Advisory Opinion OC-24/17, ¶ 65, 202.

<sup>92</sup> The IACtHR has emphasized in the *Gómez Paquiyauri Brothers* case the duty of States to adopt special measures of protection and assistance for children under their jurisdiction and recognized that the rights of children are enshrined in numerous international instruments, including the United Nations Convention on the Rights of the Child. Inter-American Court of Human Rights, *Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, ¶ 194, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_63\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf).

<sup>93</sup> These standards particularly arise in Articles 19 and 28, as well as in Articles 29, 34, 37, and 40, considering the general principles contained in Articles 2, 3, and 12.

<sup>94</sup> Inter-American Court of Human Rights, *Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala*, Merits, ¶ 194.

<sup>95</sup> United Nations Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, April 18, 2011, ¶ 5, [https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.13\\_en.pdf](https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.13_en.pdf).

<sup>96</sup> United Nations Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, ¶ 5.

<sup>97</sup> United Nations Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, ¶ 5.

In Advisory Opinion OC-17/2002, the IACtHR stated that the true and full protection of children entails their broad enjoyment of all their rights, including their economic, social, and cultural rights.<sup>98</sup> States parties have a further duty to combat discrimination against vulnerable or marginalized groups of children and ensure that they receive equal protection under the law. The non-discrimination principle, included in Article 2 of the CRC, stresses that State parties must take adequate measures to ensure that every child has the right to protection from all forms of violence without discrimination of any kind.<sup>99</sup> This includes discrimination based on prejudices towards children in street situations or children's clothing behavior. The term "children in street situations" is defined in the CRC General Comment No. 21 as encompassing children who rely on the streets to live and/or work, as well as a broader group of children who have strong connections with public spaces, for whom the street is crucial to their everyday lives and identities.<sup>100</sup>

The United Nations Committee on the Rights of the Child (hereinafter the "UNCRC") and the IACtHR are particularly concerned about the intersections of violence and discrimination. The UNCRC recognizes that certain groups of children, such as those living in street situations, and those who identify as lesbian, gay, transgender, or transsexual, are at greater risk of experiencing violence. They have also recognized the compounding gender-based discrimination endured by girls and young women. In the *Case of the Girls Yean and Bosico*, the IACtHR acknowledged the intersectional identities of victims and emphasized that the State must pay special attention to the needs and rights of the alleged victims, and in that case gave due consideration to the condition of girls and women as members of a vulnerable group.<sup>101</sup> Dwayne Jones, as a transgender woman living in a street situation, was at a heightened risk of experiencing violence and compounding forms of discrimination.

Negative attitudes towards living with LGBTQ youth are prevalent within Jamaica. In Equality for All's 2019 Homophobia Survey, 46% of the respondents indicated that they would not allow their child to continue to live with them if they found out they were gay or lesbian.<sup>102</sup> In the same vein, 63% of respondents indicated that they would not feel comfortable living with someone who is LGBTQ.<sup>103</sup> This creates the context within which LGBTQ youth, like Dwayne Jones, are at greater risk for displacement. Following the

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<sup>98</sup> Inter-American Court of Human Rights, "ADVISORY OPINION OC-17/2002 OF AUGUST 28, 2002, REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS," (ser. A) No. 24, November 24, 2017, ¶ 137, [https://www.corteidh.or.cr/docs/opiniones/seriea\\_17\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_17_ing.pdf).

<sup>99</sup> United Nations Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, ¶ 60.

<sup>100</sup> Office of the High Commissioner on Human Rights, *Convention on the Rights of the Child General comment No. 21 (2017)*, June 20, 2017, ¶ 4, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-21-2017-children-street>.

<sup>101</sup> Inter-American Court of Human Rights, *Case of the Girls Yean and Bosico v. Dominican Republic*, Preliminary Objections, merits, reparations and costs, Judgment of September 8, 2005, ¶ 134, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_130\\_%20ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf).

<sup>102</sup> Market Research Services, *An Awareness, Attitude & Perception Survey about Issues related to Lesbian, Gay, Bisexual and Transgender (LGBT) people in Jamaica*, July 2019, 16, <https://dataspace.princeton.edu/handle/88435/dsp01m039k815v/>.

<sup>103</sup> Market Research Services, *Attitude & Perception Survey about Issues related to Lesbian, Gay, Bisexual and Transgender (LGBT) people in Jamaica*, 16.



gruesome murder of Dwayne Jones, an NGO known as Dwayne’s House was established to provide temporary shelter for displaced members of the community in Jamaica in Dwayne Jones’s honor to reduce the risk of similar tragedies being suffered within the community. This was later transformed into the Larry Chang Foundation which currently is the only shelter that provides support to displaced LGBTQ youth in Jamaica.

In working towards meeting its obligations to transgender youth, Jamaica must address all forms of gender discrimination as part of a comprehensive strategy to prevent violence. This includes addressing gender-based stereotypes, power imbalances, inequalities, and discrimination that contribute to the use of violence and coercion in various settings, including homes, schools, communities, workplaces, institutions, and society at large. Jamaica’s failure to put in place the necessary measures to ensure full and equal rights to transgender youth, particularly transgender youth identifying as female, directly contributed to the murder of Dwayne Jones, a transgender youth living in a street situation since she was twelve. Her case exemplifies the dangerous realities faced by transgender youth and street children, who are often subjected to abandonment, social exclusion, violence, and discrimination. Jamaica must take immediate action to safeguard the well-being and development of these vulnerable groups, investigate and punish violence, hold perpetrators accountable, and put an end to all forms of discrimination.

**D. LGBTQ Persons—Particularly Transgender Minors—Experience Violence as a Result of Jamaica’s Failure To Ensure Equal Protection under the Law, and To Respect and Protect the Rights To Life and Humane Treatment.**

The IACtHR has recognized that one of the most severe forms of discrimination targeting LGBTQ persons in the Americas is violence.<sup>104</sup> Violence against LGBTQ persons stems from a prejudiced desire to “punish” individuals whose identities, expressions, or bodies differ from traditional gender roles and models, or do not conform to a binary system.<sup>105</sup> Such violence may be physical (including murder, beatings, kidnappings, rape, and sexual assault) or psychological (including threats, coercion and arbitrary deprivations of liberty).<sup>106</sup> In addition to “street” violence, the United Nations Human Rights Council has recognized that young LGBTQ people and those of all ages who are seen to be transgressing social norms are at risk of family and community violence.

The American Convention creates an obligation to protect LGBTQ persons from violence. Articles 1(1) and 2 of the American Convention generate State responsibility to provide judicial protection from conduct perpetrated by individuals against vulnerable persons, and to ensure domestic legal effects by strengthening their national institutions with a view to

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<sup>104</sup> Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶ 68.

<sup>105</sup> United Nations Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 17 November 2011, ¶¶ 20-22, <https://www.refworld.org/docid/4ef092022.html>.

<sup>106</sup> United Nations Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, ¶ 20.

preventing and investigating violent acts and ensuring due judicial protection for victims on an equal footing.<sup>107</sup> Article 3 of the Convention of Belém do Pará further provides enhanced protection for women, guaranteeing their right to a life free of violence and obligating States Parties to eliminate violence in both the public and the private spheres. As such, States must adopt “positive and specific measures” in response to the specific needs of vulnerable persons.<sup>108</sup> The IACtHR has held that a “State may be found responsible for acts by private individuals in cases in which, through actions or omissions” by the State’s agents, “the State does not fulfill these obligations.”<sup>109</sup> Transphobic violence is a particularly brutal type of gender-based violence motivated by a desire to punish individuals who challenge traditional gender norms.<sup>110</sup>

Reports by J-FLAG and other human rights organizations indicate a disturbing trend of violence and discrimination against the LGBTQ community, with persons experiencing physical and verbal assaults or threats, bullying, harassment, sexual violence, including rape and assault, and extortion.<sup>111</sup> One report documented the case of a mob stoning a bus carrying an LGBTQ person, and noting twenty-six additional reports of mob attacks.<sup>112</sup> The mob attacks were distributed across several years, with four each reported in 2011 and

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<sup>107</sup> For instance, the OAS has consistently issued general resolutions condemning all forms of discrimination and acts of violence against individuals based on their gender identity or expression and encouraging member states to adopt anti-discrimination policies. Organization of American States, “HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY,” AG/RES. 2435 (XXXVIII-O/08), adopted June 3, 2008, <https://www.refworld.org/pdfid/4a54bc090.pdf>; Organization of American States, “HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY,” AG/RES. 2504 (XXXIX-O/09), adopted June 4, 2009, <https://www.refworld.org/pdfid/4ad5ae402.pdf>; Organization of American States, “HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY,” AG/RES. 2600 (XL-O/10), adopted June 8, 2010, [https://www.oas.org/dil/esp/ag-res\\_2600\\_xl-o-10\\_esp.pdf](https://www.oas.org/dil/esp/ag-res_2600_xl-o-10_esp.pdf); Organization of American States, “HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY,” AG/RES. 2653 (XLI-O/11), adopted June 7, 2011, [https://www.oas.org/dil/esp/ag-res\\_2653\\_xli-o-11\\_esp.pdf](https://www.oas.org/dil/esp/ag-res_2653_xli-o-11_esp.pdf); Organization of American States, “HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY,” AG/RES. 2721 (XLII-O/12), adopted on June 4, 2012, <https://www.oas.org/en/iachr/lgtbi/docs/GA%20Res%20%202721.pdf>; Organization of American States, “HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY AND EXPRESSION,” AG/RES. 2807 (XLIII-O/13), adopted June 6, 2013, [https://www.oas.org/en/iachr/lgtbi/docs/AG-RES\\_2807\\_XLIII-O-13.pdf](https://www.oas.org/en/iachr/lgtbi/docs/AG-RES_2807_XLIII-O-13.pdf); Organization of American States, “HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY AND EXPRESSION,” AG/RES. 2863 (XLIV-O/14), adopted June 5, 2014, <http://www.oas.org/en/iachr/lgtbi/docs/ag-res2863-xliv-o-14eng.pdf>.

<sup>108</sup> Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, ¶¶ 43-44, <https://www.cidh.oas.org/pdf%20files/SEGURIDAD%20CIUDADANA%202009%20ENG.pdf>.

<sup>109</sup> Inter-American Court of Human Rights, *Case of “Mapiripán Massacre” v. Colombia*, Merits, reparations and costs, Judgment of September 15, 2005, ¶ 111, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_134\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_134_ing.pdf).

<sup>110</sup> Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶ 128.

<sup>111</sup> Equality for All Foundation Jamaica, *Human Rights Violations 2011-2020 Analysis Report*, 2021, <https://www.equalityjamaica.org/wp-content/uploads/2023/01/Human-Rights-Violations-2011-2020-Analysis-Report.pdf>; see also Equality for All Foundation Jamaica, *(re)Presenting and Redressing LGBT Homelessness in Jamaica*; Human Rights Watch, *Not Safe at Home*.

<sup>112</sup> Equality for All Foundation Jamaica, *Human Rights Violations 2011-2020 Analysis Report*, 16.

2015, two each in 2012 and 2013, three in 2017, and five each in 2016 and 2018.<sup>113</sup> Additionally, there was one case of being buried alive and one case of poisoning reported in 2020.<sup>114</sup>

The United Nations has also documented a history of violence against LGBTQ persons in Jamaica. A report of the U.N. Special Rapporteur on extrajudicial or arbitrary executions provides an overview of the history of violence against LGBTQ individuals in Jamaica.<sup>115</sup> A report by the International Commission of Jurists recounts attacks in August 1997 against gay people jailed at St. Catherine's district prison and Kingston general penitentiary that resulted in 16 dead and 40 injured.<sup>116</sup> The attacks were triggered by the Corrections Commissioner's plan to distribute condoms to prisoners and guards to prevent the spread of HIV/AIDS.<sup>117</sup>

The U.N. Special Rapporteur report also recounts the 2004 murder of Brian Williamson, a well-known gay rights activist killed in his home.<sup>118</sup> Shortly after his body was found, a crowd gathered outside, and someone shouted, "Battyman [homosexual] he get killed!" Others allegedly celebrated his death by making statements such as, "Let's get them one at a time," "That's what you get for sin," and "Let's kill all of them."<sup>119</sup> On November 30, 2005, at least four attackers broke into Lenford "Steve" Harvey's home around 1 a.m.<sup>120</sup> The attackers tied him up, along with two others in the residence, and stole their belongings. The assailants then took Harvey and his car with them and killed him, leaving his body with gunshot wounds in a rural area far from his home. The Special Representative of the Secretary-General on the situation of human rights defenders expressed concern that Harvey's murder was related to his work defending the human rights of marginalized individuals and people living with HIV/AIDS in Jamaica and the Caribbean.<sup>121</sup>

Dwayne Jones's death was the result of mob violence, which LGBTQ people throughout Jamaica regularly experience. Two cases involving mob violence against LGBTQ people in Jamaica were brought to the Commission in 2011 and decided in 2020.<sup>122</sup> In both cases,

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<sup>113</sup> Equality for All Foundation Jamaica, *Human Rights Violations 2011-2020 Analysis Report*, 16.

<sup>114</sup> Equality for All Foundation Jamaica, *Human Rights Violations 2011-2020 Analysis Report*, 20-21.

<sup>115</sup> See Philip Alston, *Extrajudicial, summary or arbitrary executions : report of the Special Rapporteur, Philip Alston : addendum*, E/CN.4/2005/7/Add.1, March 17, 2005, ¶ 368-74, <https://digitallibrary.un.org/record/544564?ln=es>; see also International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law*.

<sup>116</sup> International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law*, ¶ 829.

<sup>117</sup> International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law*, ¶ 829.

<sup>118</sup> Alston, *Extrajudicial, summary or arbitrary executions*, ¶ 370.

<sup>119</sup> International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law*, ¶ 494.

<sup>120</sup> International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law*, 66.

<sup>121</sup> International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law*, 66.

<sup>122</sup> Inter-American Commission on Human Rights, *T.B and S.H v. Jamaica*, Merits (Publication), Report No. 401/20, ¶ 8; Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits (Publication), Report No. 400/20, ¶ 8.

the Commission found that Jamaica had discriminated against the petitioners and denied them equal protection of the law.<sup>123</sup>

In the first case, *T.B and S.H v. Jamaica*, petitioners were victims of mob attacks because of their sexual orientation or gender identity.<sup>124</sup> Petitioner T.B., a trans woman, was the victim of a mob attack in March 2011, after which police harassed and threatened her. The episode led to T.B.'s mother evicting her from their home.<sup>125</sup> Petitioner S.H., a gay man, was attacked because of his sexual orientation in four incidents that involved homophobic slurs, physical assault, and threats by homophobic mobs.<sup>126</sup> In the second case, *Gareth Henry and Simone Carline Edwards v. Jamaica*, petitioners challenged Jamaica's anti-buggery laws for perpetuating anti-LGBTQ discrimination and violence.<sup>127</sup> Mr. Henry, a gay man, was regularly harassed and beaten by police officers, including during a homophobic mob attack.<sup>128</sup> Ms. Edwards, a lesbian woman, was gravely injured during a homophobic gang shooting.<sup>129</sup>

On some occasions, harassment by police has created public spectacles around LGBTQ people, making them more visible and vulnerable to violence. For instance, on June 18, 2004, police reportedly hurled insults at Victor Jarrett, who was sitting on a beach in Montego Bay. After accusing Jarrett of being gay and watching men on the beach, police beat Jarrett with batons and then urged others to beat him because he was a homosexual. A mob then chased Jarrett into a nearby house, where he was "chopped, stabbed, and stoned to death."<sup>130</sup> In another case in April 2007, when police responded to a mob attack during the funeral of a gay man in Mandeville, officers joined the mob in taunting the mourners and did not intervene when the mob threatened mourners with stones and batons. Police did not detain any members of the mob and instead stopped and searched the mourners' vehicles.<sup>131</sup>

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<sup>123</sup> Inter-American Commission on Human Rights, *T.B and S.H v. Jamaica*, Merits (Publication), Report No. 401/20, ¶ 135; Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits (Publication), Report No. 400/20, ¶ 120.

<sup>124</sup> Inter-American Commission on Human Rights, *T.B and S.H v. Jamaica*, Merits (Publication), Report No. 401/20, ¶ 11.

<sup>125</sup> Inter-American Commission on Human Rights, *T.B and S.H v. Jamaica*, Merits (Publication), Report No. 401/20, ¶¶ 16-18.

<sup>126</sup> Inter-American Commission on Human Rights, *T.B and S.H v. Jamaica*, Merits (Publication), Report No. 401/20, ¶¶ 12-15.

<sup>127</sup> Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits (Publication), Report No. 400/20, ¶¶ 10-11.

<sup>128</sup> Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits (Publication), Report No. 400/20, ¶¶ 12-15.

<sup>129</sup> Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits (Publication), Report No. 400/20, IACHR, ¶ 16.

<sup>130</sup> Jose Miguel Vivanco and Joanne Csete, "Letter urging thorough Jamaican police investigation of cases of homophobic violence," Human Rights Watch, July 12, 2004, <https://www.hrw.org/news/2004/07/12/letter-urging-thorough-jamaican-police-investigation-cases-homophobic-violence>.

<sup>131</sup> Research Directorate, Immigration and Refugee Board of Canada, *Jamaica: How police treat complaints made by lesbian, gay, bisexual, and transgender (LGBT) people (2007-2010)*, 2010, JAM103642.E, 2.

The prevalence of violence against the LGBTQ community in Jamaica illustrates the government's failure to create the appropriate conditions to prevent violence against LGBTQ persons and particularly LGBTQ minors.

#### **E. In Addition To Failing To Ensure Equal Protection under the Law, Police Forces Perpetrate Violence and Discrimination against LGBTQ Persons**

There are many documented instances of police arresting, abusing, or discriminating against individuals because of their sexual orientation or gender identity. A 2014 Human Rights Watch report details several cases of police brutality against LGBTQ victims.<sup>132</sup> An anonymous informant reported that “after a large crowd beat him in January 2013, police handcuffed and physically assaulted him in the police car and station,” where officers hit him with batons and their elbows.<sup>133</sup> A 20-year-old homeless gay man reported that “police don’t like homosexuals” and would “pepper spray, throw stones, and chase [him and his gay friends] down like dogs.”<sup>134</sup>

In some reported cases, police officers perpetrated sexual violence against LGBTQ Jamaicans. One person interviewed by Human Rights Watch recounted being sexually assaulted by an officer when he was a seventeen-year-old minor:

One Sunday evening [a police officer] called me over, handcuffed me, and told me that I was arrested for loitering. He drove me to a field, pulled my pants down, removed my handcuffs, put his gun to my head, and raped me. I grunted and screamed. When he was finished the police officer said, “If you tell anyone, you’re dead.”<sup>135</sup>

In many instances, Jamaica Constabulary Force (hereinafter the “JCF”) officers publicly and privately disparage LGBTQ people. On June 24, 2004, six gay men were assailed in their home and beaten by a group of armed men. A human rights observer who was present at the Constant Spring police station on June 25 observed that officers taking statements from the men who were attacked laughed when the men reported what had happened to them and made derisive comments about the victims and gay men in general.<sup>136</sup>

When Maurice Tomlinson sought police protection from homophobic threats in 2012, including death threats, the police officer in charge responded, “I hate gays, they make me sick.”<sup>137</sup> The unaddressed threats of violence led Tomlinson to leave Jamaica and take up residence in Canada. When Angeline Jackson reported her sexual assault to the police in 2009, the officer she spoke with questioned her sexuality, saying she “should leave this

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<sup>132</sup> Human Rights Watch, *Not Safe at Home*, 21-38.

<sup>133</sup> Human Rights Watch, *Not Safe at Home*, 34.

<sup>134</sup> Human Rights Watch, *Not Safe at Home*, 35.

<sup>135</sup> Human Rights Watch, *Not Safe at Home*, 35.

<sup>136</sup> “Buju Banton charged with gay bashing,” *The Advocate*, September 28, 2005, <https://www.advocate.com/arts-entertainment/entertainment-news/2005/09/28/buju-banton-charged-gay-bashing>.

<sup>137</sup> Home Office, United Kingdom, *Operational Guidance Note: Jamaica*, December 2013, Jamaica OGN v12.0, 20, <https://www.refworld.org/docid/52a6f6cc4.html>.

lifestyle and go back to church.”<sup>138</sup> These incidents evince homophobic sentiments among the police and discourage LGBTQ Jamaicans from reporting crimes or seeking police protection.

In addition to disparaging individuals with whom JCF officers interact, officers occasionally make public homophobic pronouncements. In 2011, Fitz Bailey, who led the JCF Organized Crime Division, claimed that LGBTQ people are a primary group responsible for lottery scams.<sup>139</sup> Commissioner of Police Owen Ellington promptly retracted Bailey’s statement, but the incident publicly showed anti-LGBTQ sentiment within the police leadership.<sup>140</sup>

Many sources report that police blackmail and extort LGBTQ citizens, sometimes deploying forms of extrajudicial violence to accomplish this.<sup>141</sup> For instance, two people arrested together for buggery and gross indecency in 2011 were told by police, “you’re going to need money to get out of this.” While they were in jail, “inmates verbally and physically attacked them.” The men’s shouts for help elicited no response from the police.<sup>142</sup>

Police have used anti-buggery laws to threaten LGBTQ citizens with arrest and imprisonment.<sup>143</sup> Maurice Tomlinson reports that in 2006 he was asked to serve as a mediator between police officers and a man caught engaging in anal sex with another man. The police demanded payment in return for dropping the buggery charge, which the man’s family agreed to pay.<sup>144</sup>

Police sometimes threaten to reveal a person’s sexual orientation or gender identity to the broader community to extract money from LGBTQ Jamaicans. In one case of extortion reported in 2014, an interviewee recalled officers stopping him and another gay man, who “was married, so he didn’t want it to go too far.” The police asked for money, and the man paid J\$50,000. When officers asked for more, “in the interest of protecting his marriage, he paid more.”<sup>145</sup>

Discrimination and violence against LGBTQ people by the police violate their rights to non-discrimination and equal protection of the law. In some cases, like Dwayne Jones’s,

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<sup>138</sup> Human Rights First, *The World As It Should Be*, 9-10.

<sup>139</sup> Human Rights First, *The World As It Should Be*, 9.

<sup>140</sup> Human Rights First, *The World As It Should Be*, 9.

<sup>141</sup> *The Unnatural Connexion: Creating societal conflict through legal tools: Laws Criminalizing Same Sex Sexual Behaviors and Identities and the Human Rights Impact in Caribbean Countries*, Regional meeting of LGBTI activists from CARICOM states on the Inter-American Human Rights System, 2010, 39-40, <http://arc-international.net/wp-content/uploads/2013/01/OAS-2010-LGBT-Caribbean-Regional-Report.pdf>; Human Rights First, *The World As It Should Be*, 1; Human Rights Watch, *Not Safe at Home*, 36-38; Research Directorate, Immigration and Refugee Board of Canada, *Jamaica: Treatment of sexual minorities, including legislation, state protection and support services (2013-December 2015)*, 2016, JAM105416.E, 3, 6-7.

<sup>142</sup> Human Rights Watch, *Not Safe at Home*, 38.

<sup>143</sup> Human Rights First, *The World As It Should Be*, 9-10.

<sup>144</sup> *The Unnatural Connexion*, 39-40.

<sup>145</sup> Human Rights Watch, *Not Safe at Home*, 36.

police practices violate LGBTQ persons' right to life, both by failing to protect Jones against community violence, and failing to investigate and hold accountable the perpetrators of such violence. Jamaica's policing practices must be reformed to comply with the country's international obligations under the American Convention and the OAS Charter.

### **III. Jamaican Police Forces Fail To Investigate Violations of the Right To Life of Transgender Persons and Provide Adequate Remedies for Violations of Their Rights**

The murder of Dwayne Jones, as well as other cases of potentially unlawful death demonstrate a systemic failure by Jamaican authorities, in particular, the police, to investigate violations of the right to life, which is itself a violation of Article 4 of the American Convention. Jamaica has an obligation to fully, promptly, and transparently investigate potentially unlawful deaths under its jurisdiction. The IACHR has already found that Jamaica in the past has failed to uphold its obligations to investigate violations of the right to life. Additionally, Article 25 of the American Convention, States Parties are obliged to provide effective judicial remedies to the victims of human rights violations. These remedies must be substantiated pursuant to the rules of due process of law outlined in Article 8(1), and the general obligation established in Article 1(1).<sup>146</sup>

Providing access to justice means ensuring that everything necessary is done to know the truth of what happened and to investigate, prosecute and punish those responsible. The duty to investigate is “an obligation of means and not of results; however, it requires” that state authorities take all reasonable measures to discover whether possible discrimination is involved.<sup>147</sup> The Court found that:

When there are indications or concrete suspicions of discrimination-based violence, the State must take all reasonable steps, based on the circumstances, to gather and safeguard the evidence, explore all practical means to discover the truth, and issue fully reasoned, impartial and objective decisions, without omitting suspicious facts that may indicate discrimination-based violence. The failure by the authorities to investigate possible discriminatory motives may, *per se*, constitutes a form of discrimination, contrary to the prohibition established in Article 1(1) of the American Convention.<sup>148</sup>

As it applies to the right to life, the Minnesota Protocol on the Investigation of Potentially Unlawful Death (hereinafter “Minnesota Protocol”) articulates the international legal

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<sup>146</sup> See Inter-American Court of Human Rights, *Case of V.R.P., V.P.C. et al. v. Nicaragua*, Preliminary objections, merits, reparations and costs, Series C No. 350, Judgment of March 8, 2018, ¶ 150, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_350\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_350_ing.pdf); See also Inter-American Court of Human Rights, *Case of Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶ 103.

<sup>147</sup> Inter-American Court of Human Rights, *Case of Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶ 103.

<sup>148</sup> Inter-American Court of Human Rights, *Case of Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, ¶ 107.

obligations that States must comply with to fulfill the duty to investigate potentially unlawful deaths, and it provides best practices from the legal and forensic fields for conducting such death investigations. The Protocol provides that a “State’s duty to investigate is triggered where it knows or should have known of any potentially unlawful death.”<sup>149</sup> The Minnesota Protocol requires that State investigations of potentially unlawful deaths be: (i) prompt; (ii) effective and thorough; (iii) independent and impartial; and (iv) transparent, to satisfy international legal obligations.<sup>150</sup> The Minnesota Protocol also sets out particular rights of next of kin and families within the investigation process, and the U.N. Human Rights Committee has affirmed that there are obligations to take special measures to protect the right to life of LGBTQ persons.<sup>151</sup>

The IACtHR and the IACHR have both found in multiple cases over the past two decades that State adherence to the Minnesota Protocol is required under international law.<sup>152</sup> In the *Case of Olivares Muñoz et al. v. Venezuela* (2020), the Court noted that its

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<sup>149</sup> Office for the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, 2017, HR/PUB/17/4, ¶ 15, <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

<sup>150</sup> Office for the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, ¶ 22 (citing, *inter alia*, Inter-American Court of Human Rights, *Case of Gómez Palomino v. Peru*, Merits, reparations and costs, Order of November 22, 2005, ¶ 79, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_136\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_136_ing.pdf) and Inter-American Court of Human Rights, *Case of Landaeta Mejías Brothers et al. v. Venezuela*, Merits, reparations and costs, Judgment of August 27, 2014, ¶ 254, [https://corteidh.or.cr/docs/casos/articulos/seriec\\_281\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_281_ing.pdf)).

<sup>151</sup> United Nations Human Rights Committee, *General comment No. 36 (2019): Article 6: The right to life*, September 2, 2019, ¶ 23, <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>.

<sup>152</sup> See, *inter alia*, Inter-American Court of Human Rights, *Resolution in Case of Pacheco León et al. v. Honduras*, May 12, 2022, res. 2(b), <https://summa.cejil.org/api/files/1655314425825gi3w14ssw7c.pdf> (ordering Honduras to, “within a year, establish a protocol for the diligent investigation of crimes related to violent deaths in accordance with the Minnesota Protocol”); Inter-American Court of Human Rights, *Case of Pacheco León et al. v. Honduras*, Merits, reparations, and costs, Judgment of November 15, 2017, ¶¶ 79-81, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_342\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_342_esp.pdf); Inter-American Court of Human Rights, *Case of Ruiz Fuentes et al. v. Guatemala*, Preliminary objection, merits, reparations and costs, Judgment of October 10, 2019, ¶¶ 175-85, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_384\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_384_ing.pdf); Inter-American Commission of Human Rights, *Case of Vicky Hernández and Family v. Honduras*, Merits (Publication), Report No. 157/18, December 7, 2018, ¶¶ 81-88, <https://www.oas.org/en/iachr/decisions/court/2019.pdf> (“In order to ensure due diligence in the conduct of a thorough and impartial investigation of a violent death, including situations that might include State agents, the Commission underscores a number of standard contained in the Minnesota Protocol.”); Inter-American Court of Human Rights, *Case of Ortiz Hernández et al. v. Venezuela*, Preliminary objections, merits, reparations and costs, Judgment of August 22, 2017, ¶¶ 158-61, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_338\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_338_esp.pdf); Inter-American Court of Human Rights, *Case of Velásquez Paiz et al. v. Guatemala*, Preliminary objections, merits, reparations and costs, Judgment of November 19, 2015, ¶ 150, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_307\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_307_ing.pdf).

(“The Court has established that, in the context of the obligation to investigate a death, real determination to uncover the truth must be demonstrated starting with due diligence in the initial procedures. On this point, in relation to the processing of the crime scene, the handling and removal of the victim’s corpse, the autopsy, and the chain of custody of each piece of forensic evidence, the Court has affirmed in its case law, and in keeping with the United Nations Manual on the Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol), that various basic and essential measures must



case law has established the guiding principles that must be observed in the investigation of a violent death, with reference to the [Minnesota Protocol], highlighting the duty to carry out some basic and indispensable procedures to preserve probative elements and evidence that may contribute to the success of the investigation.<sup>153</sup>

Of particular note, one form of reparation that the Court has recognized is the right of victims or their next of kin to know the truth about human rights violations, which is inherent to their right to obtain clarification of the facts and corresponding responsibilities through investigation and prosecution, as provided for in Articles 8 and 25 of the American Convention.<sup>154</sup> Knowing the truth about human rights violations not only serves as a form of reparation but also can support the prevention of such violations from recurring in the future.<sup>155</sup>

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be taken to conserve indications and evidence that may contribute to the success of the investigation.”). For additional examples of when the Court has ordered the use of the Minnesota Protocol as best practice for the investigation of potentially unlawful deaths, see, Inter-American Court of Human Rights, *Case of González et al., (“Cotton Field”) v. Mexico*, Preliminary objection, merits, reparations, and costs, Judgment of November 16, 2009, ¶¶ 301, 305, 310, 318, 502, and 602(18),

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf); Inter-American Commission of Human Rights, *Case of Michael Gayle v. Jamaica*, Merits (Publication), Report No. 92/05, October 24, 2005, ¶ 84, <http://cidh.org/annualrep/2005eng/Jamaica.12418eng.htm>; Inter-American Court of Human Rights, *Case of Juan Humberto Sánchez v. Honduras*, Preliminary objections, merits, reparations and costs, Judgment of June 7, 2003, ¶ 127, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_99\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_99_ing.pdf).

<sup>153</sup> Inter-American Court of Human Rights, *Case of Olivares Muñoz et al. v. Venezuela*, Merits, reparations, and costs, Judgment of November 10, 2020, n. 154 (citing Inter-American Court of Human Rights, *Case of Juan Humberto Sánchez v. Honduras*, Preliminary objections, merits, reparations and costs, ¶ 127; Inter-American Court of Human Rights, *Case of Velásquez Paiz et al. v. Guatemala*, Preliminary objections, merits, reparations and costs, ¶ 150-54.; and Inter-American Court of Human Rights, *Case of Ruiz Fuentes et al. v. Guatemala*, Preliminary objection, merits, reparations and costs, ¶ 180. See also Inter-American Court of Human Rights, *Case of Olivares Muñoz et al. v. Venezuela*, Merits, reparations, and costs, ¶ 77 (“In order to ensure due diligence through an exhaustive and impartial investigation of a death that took place under suspicious circumstances involving State agents, the Commission has emphasized the relevance of the standards contained in the Minnesota Protocol.”).

<sup>154</sup> Inter-American Court of Human Rights, *Case of Osorio Rivera and family members v. Peru*, Preliminary objections, merits, reparations and costs, Judgment of November 26, 2023, ¶ 195 [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_274\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_274_ing.pdf); Inter-American Court of Human Rights, *Case of Garibaldi v. Brazil*, Preliminary objections, merits, reparations and costs, Judgment of September 23, 2009, § 167, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_203\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_203_ing.pdf).

<sup>155</sup> See Inter-American Court of Human Rights, *Case of the 19 Merchants v. Colombia*, Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, § 259. See also *Case of the Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, § 169, I/A Court H.R., Judgment of March 1, 2005. *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, § 78, I/A Court H.R., ¶ 78. *Case of Blanco Romero et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of November 28, 2005. Series C No. 138, § 95, I/A Court H.R., *Case of Baldeón García v. Venezuela*. *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, § 196, I/A Court H.R., Judgment of April 6, 2006. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, § 245.

Additionally, in *Vicky Hernández et al. v. Honduras*—mentioned in the section above—the IACHR noted that in cases dealing with violence committed against LGBTQ persons, “the duty of due diligence should be especially rigorously applied,” given the high rates of violence, entrenched discrimination, and culture of impunity that LGBTQ persons have historically faced.<sup>156</sup>

#### **A. Jamaica Failed To Meet Its Obligation to Investigate the Killing of Dwayne Jones**

Jamaica’s investigation of the death of Dwayne Jones failed to comply with the elements of an effective investigation as required under the Minnesota Protocol. First, the investigation was not prompt. Promptness requires authorities to “conduct an investigation as soon as possible and proceed without unreasonable delays.”<sup>157</sup> Notably, in cases where an investigation is not prompt, “the duty does not cease even with the passing of significant time.”<sup>158</sup> While Dwayne Jones’s death occurred almost a decade ago, no arrests have been made, and no charges have been filed in connection with the case. This fact stands in stark contrast with a statement made just three weeks after Dwayne Jones’s death by Deputy Superintendent of Police Steve Brown that, “[w]e are following some leads so we sincerely hope we will be able to make an arrest in the matter very soon.”<sup>159</sup> As such, the investigation cannot be considered prompt.

Second, the investigation was not effective and thorough. In order to meet this requirement, the Minnesota Protocol requires, at minimum, that investigators:

take all reasonable steps to: (a) Identify the victim(s); (b) Recover and preserve all material probative of the cause of death, the identity of the perpetrator(s) and the circumstances surrounding the death; (c) Identify possible witnesses and obtain their evidence in relation to the death and the circumstances surrounding the death; (d) Determine the cause, manner, place, and time of death, and all of the surrounding circumstances ... [and] (e) Determine who was involved in the death and their individual responsibility for the death.<sup>160</sup>

Ultimately, “[t]he investigation must determine whether or not there was a breach of the right to life.”<sup>161</sup> Deputy Superintendent Brown acknowledged in the weeks following

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<sup>156</sup> Inter-American Commission on Human Rights, *Vicky Hernández and Family*, Merits (Publication), Report No. 157/18, ¶¶ 73-75, 82-84, and 86-88.

<sup>157</sup> Office for the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, ¶ 23.

<sup>158</sup> Office for the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, ¶ 23.

<sup>159</sup> “Police: Arrest Soon in Cross-Dresser’s Death,” *Jamaica Observer*, August 14, 2013, [https://web.archive.org/web/20150706001250/http://www.jamaicaobserver.com/news/Police--Arrest-soon-in-cross-dresser-s-death\\_14870714](https://web.archive.org/web/20150706001250/http://www.jamaicaobserver.com/news/Police--Arrest-soon-in-cross-dresser-s-death_14870714).

<sup>160</sup> Office for the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, ¶ 25.

<sup>161</sup> Office for the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, ¶ 26.

Dwayne Jones's death that "a strong anti-informant culture that makes eyewitnesses to murders and other crimes too afraid or simply unwilling to come forward" posed a major challenge to the investigation.<sup>162</sup> However, despite a commitment in the weeks following Dwayne Jones's death from then-Justice Minister Mark Golding "that his forces would spare no expense to find Jones' killers,"<sup>163</sup> the fact that in the nearly ten years since Dwayne Jones's death there has not been a formal determination as to whether the right to life was breached, itself constitutes a violation of the duty to effectively and thoroughly investigate.

Third, it is necessary to assess whether the investigation was independent and impartial. Independence and impartiality require that investigators "act at all times without bias," and that investigators and investigative mechanisms "must be, and must be seen to be, independent of undue influence."<sup>164</sup> Specific facts regarding the investigation's non-compliance with this element, much like publicly available facts about the investigation in general, are limited. However, in recent IACHR decisions challenging Jamaica's laws that prohibit same-sex conduct, the Commission has asserted Jamaica's obligation to "apply the standard of due diligence in the prevention, investigation, punishment, and reparation of violence against LGBTI persons," and to "[e]nsure that investigations are not permeated by prejudice based on the sexual orientation and/or real or perceived gender identity of the victim or the perpetrator."<sup>165</sup>

Finally, the investigation was not transparent. The Minnesota Protocol requires that "[i]nvestigative processes and outcomes must be transparent, including through openness to the scrutiny of the general public and of victims' families."<sup>166</sup> To date, little information about the investigation has been shared with the public, including even an official notice regarding whether or not the investigation has been terminated. Since public scrutiny of the investigation is being made impossible, the investigation cannot be considered to be transparent.

In keeping with Inter-American jurisprudence on the duty to investigate potentially unlawful deaths and the application of the Minnesota Protocol to such death investigations, Jamaica's failure to comply with the Protocol in its investigation of the death of Dwayne Jones means that Jamaica violated her right to life under Article 4 of the American Convention.

Outside of this specific case, Jamaica has longstanding, well-documented issues regarding non-compliance with the Minnesota Protocol, including in cases of alleged killings

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<sup>162</sup> McFadden, "Transgender Teen Killed by Mob."

<sup>163</sup> Palash Ghosh, "Boom Bye Bye: Murder of Cross-Dresser Lifts Lid on Jamaica's Violent Homophobia," *International Business Times*, August 2, 2013, <https://www.ibtimes.com/boom-bye-bye-murder-cross-dresser-lifts-lid-jamaicas-violent-homophobia-1370173>.

<sup>164</sup> Office for the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, ¶¶ 28 and 31.

<sup>165</sup> Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits (Publication), Report No. 400/20, ¶ 120(2)(IV); an Inter-American Commission on Human Rights, *T.B and S.H v. Jamaica*, Merits (Publication), Report No. 401/20, ¶ 135(2)(V).

<sup>166</sup> Office for the United Nations High Commissioner for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, ¶ 32.

perpetrated by State security forces.<sup>167</sup> The IACHR has itself identified this systemic problem, noting in *Michael Gayle*, a case in which Jamaica was found to have “failed to undertake a thorough, prompt, and impartial investigation into” a killing perpetrated by state security forces, that “Jamaica faces a particularly high burden in establishing that its investigations of police killings” adhere to international standards, given “the problem of impunity for police killings in Jamaica.”<sup>168</sup> This finding, also captured in the Commission’s 2012 *Report on the Situation of Human Rights in Jamaica*, confirms the deeply rooted nature of Jamaica’s challenge with non-compliance, despite recent institutional and policy reforms.<sup>169</sup>

## **B. Police Reforms and Oversight Mechanisms are Inadequate To Hold Jamaica Accountable for Discrimination and Failures To Protect LGBTQ Individuals**

Police have implemented reforms and general oversight mechanisms over the past 15 years, with mixed results. Data about crimes committed against LGBTQ Jamaicans continue to be unreliable and are not publicly reported. Underreporting of crimes against LGBTQ individuals due to community mistrust of police remains pervasive. The Independent Commission of Investigations (hereinafter “INDECOM”), a police oversight body created in 2010 as a general check on police corruption and abuse, has recently been disempowered by a Jamaican court decision.<sup>170</sup> While some civil society organizations report improvements in police behavior toward LGBTQ Jamaicans, violence and discrimination

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<sup>167</sup> Amnesty International, *Jamaica – Killings and Violence by Police: How Many More Victims?*, 2001, 16-27, 34-26, 63-65, 72-73, 80-94, <https://www.amnesty.org/fr/wp-content/uploads/2021/06/amr380032001en.pdf> (provides a high-level overview, drawing on media reporting and interviews with prominent activists, politicians, and civil society organizations, of Jamaica’s broader non-compliance with the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions in the late 1990s and early 2000s, including the inadequacy of its forensic investigation practices; instances of police evading accountability by covering up evidence and intimidating, threatening, and torturing witnesses; and the culture of secrecy surrounding police investigations; as well as specific instances of Jamaica’s non-compliance in prominent cases such as those of William Richards, Sean Robinson, Patrick Alfred Genius, Delroy Lewis, Rasheed Williams, and Michael Gayle); Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Jamaica*, ¶¶ 94-98 (reflects Amnesty International’s 2001 reporting and reiterates the Commission’s conclusions in *Michael Gayle* in finding that “in Jamaica, impunity for unlawful police killings has been near absolute and is an ongoing reality spanning decades”; the “partiality of the investigating institution, tampering with evidence, and severe lack of resources all negatively contribute to the high level of impunity for Jamaican police”; and “at each stage of the investigation (of murders committed in Jamaica) there are problems regarding impartiality, independence, and consistency that lead to the disservice of judicial due process in murder investigations”); and Amnesty International, *Waiting in Vain – Jamaica: Unlawful Police Killings and Relatives’ Long Struggle for Justice*, 2016, 6, 22-24, 29-33, <https://www.amnesty.org/en/documents/amr38/5092/2016/en> (documents, through interviews with “more than 50 relatives (39 women and 14 men) of 28 people believe to have been unlawfully killed by the police between 2003 and 2014,” the prevalence of police use of illegal tactics in the aftermath of crimes, including the alteration of crime scenes and the harassment and intimidation of witnesses and relatives of victims).

<sup>168</sup> Inter-American Commission on Human Rights, *Michael Gayle*, Merits (Publication), Report No. 92/05, ¶¶ 88, 93, and 102.

<sup>169</sup> Inter-American Commission on Human Rights, *Report on the situation of Human Rights in Jamaica*, ¶ 94-98.

<sup>170</sup> INDECOM Jamaica, “Privy Council delivers judgment in INDECOM cases,” May 4, 2020, [https://www.indecom.gov.jm/press\\_release/privy-council-delivers-judgment-in-indecom-cases](https://www.indecom.gov.jm/press_release/privy-council-delivers-judgment-in-indecom-cases).

continue.<sup>171</sup> As Human Rights Watch noted in 2014, “the persistence of even isolated cases is of great concern given the police’s role as a source of protection.”<sup>172</sup>

LGBTQ Jamaicans’ mistrust of police and consequent underreporting of crimes is another obstacle to understanding trends in violence against those communities.<sup>173</sup> In a 2019 survey, J-FLAG found that only 27% of respondents reported crimes against them to police, and only 14% expected support from police.<sup>174</sup> In a 2014 report, “most of the LGBTQI people we interviewed said they did not even report criminal acts to the police, fearing they would be unresponsive because of the victim’s sexual orientation or gender identity.”<sup>175</sup>

Fear of further violence is particularly acute for transgender women like Dwayne Jones. A 2010 shadow report submitted to the U.N. Human Rights Committee highlights that gender discrimination dissuades lesbian and transgender women from reporting sexual violence against them because they believe “that the police will perpetuate the abuse or humiliate them.”<sup>176</sup> According to a report by Women for Women, an advocacy group for lesbians in Jamaica, “few women feel they can rely on the police for fear of further victimization from the police themselves.”<sup>177</sup>

As the IACHR notes, ineffective data collection and reporting mechanisms undermine policy efforts to address the issue of anti-LGBTQ police violence:

The collection of data on LGBTI persons and the compiling of official statistics on the violence to which these people are subjected are essential instruments to highlight the challenges that they face and to guarantee an effective response by States to the recognition of their rights. In this regard, the IACHR emphasizes that it is not feasible to take political decisions aimed at addressing the problem of discrimination against LGBTI persons without reliable data, which would also make their situation visible and would mean a form of recognition vis-à-vis other people.<sup>178</sup>

In response to the issue of underreporting, in 2011, the JCF “launched a Policy on Diversity, developed in consultation with J-FLAG, which requires police to ensure that LGBTQ people and other vulnerable groups can safely file police reports.”<sup>179</sup> A 2015

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<sup>171</sup> Research Directorate, Immigration and Refugee Board of Canada, *Jamaica: Treatment of sexual minorities, including legislation, state protection and support services (2013-December 2015)*.

<sup>172</sup> Human Rights Watch, *Not Safe at Home*, 33.

<sup>173</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Jamaica*, ¶ 281.

<sup>174</sup> Moore, *The Jamaican LGBT Community Experience and Needs Assessment Survey Results*, 23-24.

<sup>175</sup> Human Rights Watch, *Not Safe at Home*, 19.

<sup>176</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 13.

<sup>177</sup> Office for the United Nations High Commissioner for Human Rights, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, 13; *The Unnatural Connexion*, 35.

<sup>178</sup> Inter-American Commission on Human Rights, *Recognition of Rights of LGBTI Persons*, ¶ 42.

<sup>179</sup> Human Rights Watch, *Not Safe at Home*, 2.

report by Human Rights First noted that “it is unclear whether members of the police force are in practice being held accountable for non-compliance with the policy.”<sup>180</sup> A report by U.N. Human Rights Committee has expressed that:

Despite some positive developments, such as the adoption of the Diversity Policy by the Jamaica Constabulary Force ... the Committee notes with concern reports of incidents of discrimination, harassment and violent attacks against lesbian, gay, bisexual and transgender persons and the alleged failure of the State party to prevent and investigate such attacks.<sup>181</sup>

The JCF’s failure to document and report incidents of LGBTQ rights violations makes it challenging to assess the efficacy of efforts to hold police accountable. The Ministry of National Security has reportedly developed ways to monitor data on crime, including against members of the LGBTQ community, but such documentation has “not been effective in practice, given the lack of prioritization and mishandling of such cases by police.”<sup>182</sup>

Although the 2011 JCF Policy on Diversity includes mechanisms to monitor non-compliance, public information is unavailable. The IACHR has emphasized that “the existence of official documents, per se, does not necessarily reflect the complexity of the problems experienced by LGBTI persons, as underreporting remains a challenge; there are also limited reporting mechanisms available.”<sup>183</sup> Some NGOs, including TransWave Jamaica, are currently working with members of the JCF to achieve the policy’s goals.<sup>184</sup>

Widely seen as the most effective oversight source of accountability for JCF abuses, INDECOM was established in 2010 in response to several high-profile cases of police brutality.<sup>185</sup> Civilians staff INDECOM and its investigatory scope includes 25 types of abuse, broken across four categories: shooting incidents, detention issues, conduct and abuses (which include sexual offenses), and property incidents.<sup>186</sup> Although INDECOM publicizes detailed figures on police shootings, it does not publish data on whether crimes

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<sup>180</sup> Human Rights First, *The World As It Should Be*, 9-10.

<sup>181</sup> U.N. Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica* (2016), CCPR/C/JAM/CO/4, ¶ 17, <https://www.ohchr.org/en/documents/concluding-observations/ccprcjamco4-concluding-observations-fourth-periodic-report>.

<sup>182</sup> Human Rights First, *The World As It Should Be*, 9-10.

<sup>183</sup> Inter-American Commission on Human Rights, *Recognition of Rights of LGBTI Persons*, ¶ 42.

<sup>184</sup> TransWave Jamaica, *TransWave Annual Report 2022*, March 13, 2023, 6-9, [https://issuu.com/transwaveja/docs/transwave\\_annual\\_report-2022\\_1](https://issuu.com/transwaveja/docs/transwave_annual_report-2022_1); Inter-American Commission on Human Rights (IACHR), “Monitoring Sheet on Report No. 401/20, Case 13.095, T.B and S.H (Jamaica),” Annual Report 2022, 2022, 5-6; Inter-American Commission on Human Rights (IACHR), “Monitoring Sheet on Report No. 400/20, Case 13.367, Gareth Henry and Simone Carline Edwards (Jamaica),” Annual Report 2022, 2022, 5-6.

<sup>185</sup> Amnesty International, “Jamaica: Now is the time to legislate to give Jamaica’s police oversight mechanisms powers to charge and prosecute,” July 8, 2020, <https://www.amnesty.org/en/documents/amr38/2677/2020/en/>.

<sup>186</sup> INDECOM Jamaica, “Commission,” accessed Jun 1, 2023, <https://www.indecom.gov.jm/about-us/commission>.

were committed because of sexual orientation and gender identity.<sup>187</sup> Additionally, since crimes against LGBTQ Jamaicans are widely underreported, INDECOM’s power to hold police accountable for anti-LGBTQ violence and discrimination is limited. However, there has been anecdotal evidence of INDECOM resolving a few cases of SOGI discrimination by the police.

In 2020, in a case filed by Jamaica’s Police Federation, the Privy Council issued a controversial ruling that INDECOM lacked the legislative authority to arrest, charge, and prosecute members of the security forces that it investigated, despite INDECOM having exercised these powers for multiple years prior.<sup>188</sup> NGOs like Amnesty International have lauded INDECOM’s comprehensive work to pursue accountability on cases of police misconduct and observed that “killings by law enforcement officials halved” after INDECOM began initiating prosecutions against police officers in 2013.<sup>189</sup> Subsequent reports captured public perception in Jamaica that INDECOM’s work produced a deterrent effect regarding police killings. However, since INDECOM’s disempowerment in 2020, fatal police shootings have steadily been on the rise, increasing from 86 in 2019 to 134 in 2022.<sup>190</sup> Because the JCF does not publish data regarding violations of LGBTQ rights, it is unclear what effect the creation of INDECOM had on curbing law enforcement abuse and discrimination against LGBTQ Jamaicans. Human rights monitors report that abuse and discrimination by police continue to affect LGBTQ Jamaicans.<sup>191</sup>

#### **IV. Transphobia and Homophobia Have Additional Adverse Social and Economic Consequences for LGBTQ Persons**

##### **A. Violence and Discrimination Lead To Increased Emigration of LGBTQ People from Jamaica**

As a result of anti-LGBTQ persecution, more and more LGBTQ individuals are migrating from Jamaica. In particular, over the last several years there has been a significant increase in legal migration of transgender people. Rainbow Railroad is an international non-profit that helps LGBTQ people escape state-sponsored violence. More than 40% of their requests originate in the Caribbean.<sup>192</sup> Between 2006 and 2022, they report relocating “572 Jamaicans to safety” including over 100 between 2020 and 2022.<sup>193</sup> Rainbow Railroad recently reported that requests for assistance it receives from Jamaicans as well as reports

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<sup>187</sup> INDECOM Jamaica, “Reports,” accessed May 16, 2023, <https://www.indecom.gov.jm/reports>.

<sup>188</sup> INDECOM Jamaica, “Privy Council delivers judgment in INDECOM cases,” May 4, 2020, [https://www.indecom.gov.jm/press\\_release/privy-council-delivers-judgment-in-indecom-cases](https://www.indecom.gov.jm/press_release/privy-council-delivers-judgment-in-indecom-cases).

<sup>189</sup> Amnesty International, “Jamaica: Now is the time to legislate to give Jamaica’s police oversight mechanisms powers to charge and prosecute,” 2.

<sup>190</sup> INDECOM Jamaica, “Reports,” accessed May 16, 2023, <https://www.indecom.gov.jm/reports>.

<sup>191</sup> Rainbow Railroad and Human Dignity Trust, *A Caribbean Outlier: Repeal Anti-LGBTQ+ Laws in Jamaica*, 4-5, 8, <https://www.rainbowrailroad.org/the-latest/a-caribbean-outlier-repeal-anti-lgbtqi-laws-in-jamaica>.

<sup>192</sup> Rainbow Railroad, *The Most Homophobic Place on Earth*, accessed June 8, 2023, <https://www.rainbowrailroad.org/the-latest/powerful-first-hand-experiences-from-lgbtqi-jamaican-survivor>.

<sup>193</sup> Rainbow Railroad, *From Safehouse to a Pathway to Safety: Rainbow Railroad’s Work in Jamaica*, accessed June 8, 2023, <https://www.rainbowrailroad.org/the-latest/from-safe-house-to-a-pathway-to-safety-rainbow-railroads-work-in-jamaica>.

of violent incidents are rising, and “over the past two years, we have relocated nearly 300 gay, lesbian, bisexual, non-binary and transgender Jamaicans experiencing extreme persecution.”<sup>194</sup> Reports from J-FLAG indicate that the majority of the human rights violation reports they receive are in support of asylum claims being made by LGBTQ Jamaicans who have left or are in the process of fleeing the country, and 76% of surveyed LGBTQ Jamaicans have indicated a desire to leave Jamaica.<sup>195</sup>

## **B. Anti-LGBTQ Discrimination Has Social and Economic Costs**

In addition to social and cultural costs, there are economic consequences of LGBTQ exclusion. The collective economic harm caused by discrimination against LGBTQ individuals in the Caribbean region is estimated at between US\$1.5 and US\$4.2 billion per year, or 2.1% to 5.7% of Caribbean states’ collective GDP.<sup>196</sup> By conservative estimates, “discrimination against LGBT people, only in terms of lost economic output and excess government expenditure due to exclusion in employment and health disparities, could be costing Jamaica US\$79 million annually.”<sup>197</sup> This estimate does not account for the “cost of lost potential human capital” from emigration, reduced labor productivity due to workforce and educational discrimination, and indirect effects of discrimination that are tied to Jamaica’s economic development.<sup>198</sup>

In particular, brain drain—when “human capital is lost due to the migration of educated and skilled individuals”—constrains economic growth in Jamaica.<sup>199</sup> “Sexual orientation and gender identity discrimination exacerbates brain drain in Jamaica” and leads to adverse economic consequences.<sup>200</sup> A 2016 survey conducted by J-FLAG found that “nearly 75 percent of Jamaican LGBT people surveyed, of whom 53 percent had tertiary education, confessed to thinking about migrating because of their LGBT identity.”<sup>201</sup>

## **V. Recommendations and Statement of Relief**

We herein request the Commission find the present Petition to be admissible and ask for a hearing on the merits. This will allow representatives of the LGBTQ community in Jamaica an opportunity to share how the tragic murder of Dwayne Jones, and the subsequent failure of the State to fully investigate and ensure accountability for her death, is endemic to the overriding discrimination endured by members of the LGBTQ community in Jamaica and throughout much of the Caribbean. A hearing also provides the opportunity to demonstrate

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<sup>194</sup> Rainbow Railroad, *The Most Homophobic Place on Earth*.

<sup>195</sup> Moore, *The Jamaican LGBT Community Experience and Needs Assessment Survey Results*, 49.

<sup>196</sup> Open For Business, *The Economic Case for LGBT+ Inclusion in the Caribbean*, 2021, <https://open-for-business.org/reports>, 12.

<sup>197</sup> CAPRI Caribbean, *The Economic and Societal Costs of Sexuality-Based Discrimination in Jamaica*, 2019, 61, [https://capricaribbean.org/sites/default/files/public/documents/report/the\\_economic\\_and\\_societal\\_costs\\_of\\_sexuality\\_based\\_discrimination\\_in\\_jamaica.pdf](https://capricaribbean.org/sites/default/files/public/documents/report/the_economic_and_societal_costs_of_sexuality_based_discrimination_in_jamaica.pdf).

<sup>198</sup> CAPRI Caribbean, *Economic and Societal Costs of Sexuality-Based Discrimination*, 1.

<sup>199</sup> CAPRI Caribbean, *Economic and Societal Costs of Sexuality-Based Discrimination*, 45.

<sup>200</sup> CAPRI Caribbean, *Economic and Societal Costs of Sexuality-Based Discrimination*, 46.

<sup>201</sup> CAPRI Caribbean, *Economic and Societal Costs of Sexuality-Based Discrimination*, 46.



how the discrimination endured by LGBTQ persons in Jamaica is built into the country's legal system and a legacy of its colonization.

We further request the Commission find that Jamaica has failed to meet its obligations under international law to respect, protect, and fulfill the rights to life, security in person, equal protection under the law, personal integrity, privacy, freedom of expression, and judicial protection, without any discrimination, with respect to Dwayne Jones, and similarly situated trans Jamaicans.<sup>202</sup>

In making its findings, we respectfully call on the Commission to urge Jamaica to take all necessary measures to ensure it is meeting its obligations under the American Convention and the Convention of Belém do Pará. Such measures include the following to prevent and redress legal discrimination against the LGBTQ community:

1. Repeal Sections 76, 77, and 79 of the Offences against the Person Act (laws criminalizing same-sex conduct) in so far as they criminalize consensual sex, and amend the Sexual Offences Act to ensure rape is broadly defined so anyone can seek protection under Act.
2. Amend the Charter of Fundamental Rights and Freedoms to prohibit discrimination on the ground of sex, which under the jurisprudence of the IACHR includes sexual orientation and gender identity.<sup>203</sup>
3. Enact comprehensive anti-discrimination legislation to prohibit all forms of discrimination, inclusive of discrimination on the basis of sexual orientation and gender identity. This legislation should prohibit discrimination at the hands of state and non-state actors in all areas of life, including but not limited to housing, employment, education and provisions of services. Additionally, a body should be created to receive and investigate complaints of human rights violations.
4. Review and amend current legislation to provide individuals in same-sex relationships with the same rights as those in opposite sex-relationships.

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<sup>202</sup> The Commission is not the only body that should take action in this matter. The Court should also publish an advisory opinion declaring that anti-buggery laws like those contained in the OAPA violate the Convention rights to humane treatment (Am. Conv. Art. 5.1), privacy (Am. Conv. Art. 11), movement and residence (Am. Conv. Art. 22.1), equal protection (Am. Conv. Art. 24), judicial protection (Am. Conv. Art. 25.1), and health (Am. Conv. Art. 26). Additionally, the OAS General Assembly should pass a resolution echoing the Court's finding in *Boyce v. Barbados* that the use of general savings clauses to shield laws that violate human rights from judicial scrutiny is a violation of Article 2 of the Convention, in relation to Articles 1(1), 4(1), 4(2), and 25(1) of the same instrument.

<sup>203</sup> See Inter-American Commission on Human Rights, *Recognition of Rights of LGBTI Persons*, ¶ 33 ("In the Court's view, the specific criteria by virtue of which discrimination is prohibited, according to Article 1.1 of the American Convention, "do not constitute an exhaustive or limitative list, but merely illustrative. Indeed, the wording of said article leaves open the criteria with the inclusion of the term 'another social condition,' allowing for the inclusion of other categories that have not been explicitly indicated [...] in the context of the most favorable option for the human being and in light of the evolution of fundamental rights in contemporary international law." Through this reasoning, the Inter-American Court concluded that sexual orientation and gender identity constitute categories in respect of which discrimination under Article 1.1 of the Convention is prohibited."); see also discussion of sexual orientation and gender identity as protected categories in the Inter-American system's jurisprudence at footnotes 59-60.

To redress violence faced by the LGBTQ community, we ask the Commission to urge Jamaica to take the following steps:

5. Collect data, report on, investigate, and redress hate crimes (violent crimes committed out of hate) committed based on the sexual orientation or gender identity of the victim.
6. Apply the standard of due diligence in the prevention, investigation, punishment and reparation of violence against LGBTQ persons, regardless of whether violence occurs in the context of the family, community or public sphere, including in the workplace, sectors of education and health. Ensure that investigations are not permeated by prejudice based on the sexual orientation and / or real or perceived gender identity of the victim or the perpetrator, particularly in cases of mob violence.

Finally, we ask the Commission to urge Jamaica to address particular challenges faced by the LGBTQ community through the following policy reform and training measures:

7. Improve the country's strategy to address displacement and homelessness, including increasing the number of shelters and temporary housing facilities and ensuring that staff and other persons living at the facility are sensitized to enable them to foster an LGBTQ-friendly environment. This is necessary due to the high homophobic environment of Jamaica leading to displacement of LGBTQ persons, particularly children, adolescents and youth who are or are perceived to be LGBTQ.
8. Conduct a national human rights public education campaign to encourage the public to engender a culture of respect for the rights of all persons particularly vulnerable and marginalized groups, including LGBTQ persons; specifically targeting families, employers, community members and state actors in an attempt to reduce discrimination and violence as well as the number of displaced LGBTQ persons.
9. Provide equality and human rights training, particularly in the area of LGBTQ rights, for teachers and staff in schools, governmental officials at all levels, and law enforcement officers.