



**FROM RULINGS TO REALITY:  
JAMAICA MUST REPEAL  
HOMOPHOBIC LAWS**

## About the Human Dignity Trust

The Human Dignity Trust works with LGBT activists, local lawyers and governments around the world to defend and advance human rights in countries where private consensual sexual activity between people of the same sex is criminalised.

In collaboration with our local partners, we support both strategic litigation to challenge laws that persecute people on the basis of their sexual orientation and/or gender identity and law reform efforts to eradicate these laws and enact protective legislation. Our technical assistance for legislative reform focuses on sexual offences, equal opportunities and hate crime laws, in order to better protect LGBT people and a wide range of other marginalised groups from stigma, discrimination and violence.

In addition to our in-house legal expertise, we work with 25 of the world's leading law firms and eminent barristers, who as of 2024 have together contributed £22 million of pro bono technical legal assistance to our work across five continents.

Local activists always lead and inform our work. They set the pace to ensure that legal interventions are timely and help to drive wider calls for change. Conscious that together we are stronger, we build highly-skilled international teams to achieve meaningful, measurable and sustainable structural legal change.

We are a registered charity (No.1158093) in England and Wales.

# ACKNOWLEDGEMENTS

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## EXECUTIVE SUMMARY

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On 17 February 2021, the Inter-American Commission on Human Rights (IACHR), a top body in the human rights system of the Americas, published a landmark decision finding the Jamaican government accountable for multiple human rights violations of two Jamaicans: Gareth Henry, a gay man, and Simone Edwards, a lesbian.

The IACHR upheld Henry and Edwards' complaint that archaic provisions of the British colonial-era 1864 Offences Against the Person Act (OAPA) that outlaw the 'abominable crime of buggery' and acts of 'gross indecency' between males, with punishments of up to 10 years' imprisonment with hard labour, violate their rights under the American Convention on Human Rights and perpetuate violence against the entire LGBT community in Jamaica.

The IACHR recommended significant reforms, including the repeal of these homophobic laws, and urged comprehensive improvements to Jamaica's socio-legal framework to address discrimination against LGBT people. The decision was a clear regional endorsement of the position of numerous UN human rights treaty bodies that criminalisation of consensual same-sex sexual relations violates the human rights of LGBT people.<sup>1</sup> It was also a recognition of the rampant violence and ongoing human rights abuses suffered by the LGBT community in Jamaica, which are fostered and enabled by these laws.

Despite the IACHR's authoritative decision, Jamaica has failed to decriminalise same-sex intimacy or to implement any of the other recommendations. Instead, the government continues to downplay and ignore the violence and discrimination that plagues the lives of LGBT people, and actively resists any reform of its discriminatory sexual offence laws.

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<sup>1</sup> See for example *Toonen v. Australia*, UNHCR Communication No 488 of 1992, and, more recently, *Flamer-Caldera v. Sri Lanka*, CEDAW Communication No 134/2018.

In 2023, the Supreme Court of Jamaica found that a ‘savings law clause’ in the Jamaican Constitution expressly prohibits courts from reviewing sections of the OAPA that criminalise consensual same-sex intimacy. In effect, Jamaica’s current legal framework immunises those sections of the OAPA from any judicial challenge.

Legislative reform to decriminalise same-sex intimacy and protect LGBT people against discrimination and violence is urgent. Jamaica is increasingly an outlier among neighbouring Caribbean states that have decriminalised consensual same-sex intimacy. The government must act now to bring the criminal laws of the country in line with its obligations under international human rights law, take urgent measures to reform its sexual offences legislation, and fully implement the decision of the IACHR.

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I brought a case to the IACHR with the hope of creating the change that I want to see in Jamaica. To do something to decriminalise homosexual relationships, and deal with the ongoing violence and abuse faced by LGBT folks in the community. When the IACHR issued its decision, it gave me hope. It was recognition by the international community of the ongoing human rights abuses suffered by my brothers and sisters—and a call to action for Jamaica.

Today marks three years since the publication of the IACHR’s report and recommendations. I am disappointed that the Jamaican government has failed to take action to implement the IACHR’s recommendations. I call on the Jamaican government to act now to protect the basic human rights of its LGBT citizens.”

Gareth Henry, petitioner in the IACHR petition

# COLONIAL-ERA LAWS CRIMINALISING SAME-SEX INTIMACY IN JAMAICA

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Private, consensual same-sex intimacy between males is a criminal offence under Jamaican law. Criminalisation forms the backdrop to a persistent culture of homophobic violence that fosters attitudes that being LGBT is wrong or illegal, deserving of being punished, and undeserving of equal treatment and respect.

Sections 76, 77 and 79 of the Offences Against the Person Act 1864—the ‘buggery’ and ‘gross indecency’ laws—criminalise all sexual intimacy between men. The OAPA was introduced to Jamaica by the British colonial authority in the 19th century. The law does not criminalise same-sex intimacy between females.

Section 76 (Unnatural Crime): Whosoever shall be convicted of the **abominable crime of buggery**, committed either with mankind or with any animal, shall be liable to imprisonment and kept to hard labour for a term not exceeding 10 years.

Section 77 (Attempt): Whosoever shall **attempt to commit the said abominable crime**, or shall be guilty of any assault with intent to commit the same, or of any **indecent assault upon any male person** ... shall be liable to imprisonment of a term not exceeding 7 years, with or without hard labour.

Section 79 (Outrages on Decency): Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of **gross indecency with another male person**, shall be ... liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour.



# THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS CONDEMNS AND URGES THE REPEAL OF BUGGERY AND GROSS INDECENCY LAWS

In 2021, the IACHR published a decision finding that Jamaica's treatment of LGBT people is in violation of its obligations under the American Convention on Human Rights (the IACHR Decision).<sup>2</sup> In particular, the IACHR found that provisions of the OAPA that criminalise 'buggery' and 'gross indecency between males' were in breach of the human rights of LGBT people in Jamaica. The petition to the IACHR was brought by Gareth Henry (a gay Jamaican man) and Simone Edwards (a Jamaican lesbian), who were previously forced to flee the country due to the extreme homophobic violence they experienced.

Notably, even though Ms Edwards, as a woman, was not captured by the criminal law, the IACHR recognised the law's pernicious effect on the entire LGBT community in Jamaica, including the gun violence she was subjected to by virtue of her sexual orientation.

The IACHR set out several far-reaching recommendations to ensure compliance with Jamaica's obligations under the Convention, including:

1. Repeal Sections 76, 77 and 79 of the OAPA;
2. Adopt an anti-discrimination legal framework to prohibit discrimination based on sexual orientation, gender identity or expression, and body diversity;
3. Carry out the collection and analysis of statistical data, in a systematic and disaggregated manner, regarding the prevalence and nature of violence and discrimination on the basis of sexual orientation, gender identity or expression or body diversity;

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<sup>2</sup> Gareth Henry and Simone Carline Edwards v Jamaica (Case 13.637). Available at: <https://www.humandignitytrust.org/wp-content/uploads/resources/2020.02-GH-SE-v-JAM-IACHR-final-decision.pdf>

4. Apply due diligence in the prevention, investigation, punishment and reparation of violence against LGBT persons, irrespective of whether the violence took place in the private or public sphere;
5. Conduct periodic sensitisation training for law enforcement, the justice sector, public sector, and the education and employment sectors on the challenges faced by LGBT persons; and
6. Provide full reparations, including economic compensation, to the petitioners (Henry and Edwards).

To date, the Jamaican government has failed to comply with any of the IACHR's recommendations.

## **JAMAICA FALLING BEHIND THE CARIBBEAN REGION**

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Over the past decade, courts in many Caribbean countries have struck down laws that criminalise same-sex intimacy, recognising the constitutional rights of LGBT people to be treated with equality and inherent dignity. This includes Belize in 2016, Trinidad and Tobago in 2018 (subject to an ongoing appeal by the government), and, in 2022, in Antigua and Barbuda, St Kitts and Nevis, and Barbados.

Jamaica is now one of only six jurisdictions in the Americas where consensual same-sex intimacy is still criminalised.

In failing to implement the IACHR decision, Jamaica is falling behind in upholding its international and regional human rights obligations.



## BUGGERY AND GROSS INDECENCY LAWS IMMUNISED FROM COURT REVIEW

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Under the Jamaican Constitution, LGBT people in Jamaica do not have a remedy or avenue to challenge the buggery and gross indecency laws because of a ‘savings law clause’—a constitutional provision that shields certain laws from being challenged in the courts if they were validly in force before the adoption of the constitution.

In 2011, a new bill of rights was introduced and entrenched into the Constitution of Jamaica. A general savings law clause, which prevented all colonial laws from being constitutionally challenged, was removed and replaced with a savings clause that protects only specific laws, including those relating to sexual offences, from judicial scrutiny.<sup>3</sup> The Jamaican government contended that the savings clause prevents courts from enquiring into the constitutionality of sections 76, 77 and 79 of the OAPA.

In view of the savings clause that expressly states that sexual offences, such as those in the OAPA, cannot be held unconstitutional, the IACHR was of the view that Gareth Henry and Simone Edwards did not have an effective remedy for protection against acts that violate their human rights.

**IACHR decision, paragraphs 94–99**

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<sup>3</sup> Section 13(12) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act.

In October 2023, the Supreme Court of Jamaica, in the case of *Maurice Arnold Tomlinson v. the Attorney General of Jamaica*,<sup>4</sup> affirmed that the savings law clause immunises the relevant OAPA provisions from judicial scrutiny. Two of the judges did, however, express their concern that the savings law clause prevented the Supreme Court from fulfilling its role of examining violations of fundamental rights under the Constitution, noting that:

...it is disquieting that the state would be so driven by what must clearly be an agenda so as to preserve from scrutiny by way of **a savings law clause laws which would otherwise infringe rights** guaranteed by the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011...<sup>5</sup>

It may be thought that, in the 21st century, the state and its agents ought not to involve itself with sexual activities behind closed doors between consenting adults. This is because **it is not easy to discern any public interest served, by involvement of the state, in matters of so personal a nature.**<sup>6</sup>

[...] the present savings law clause was specifically and clearly deliberately designed to exclude from judicial examination the question of whether there has been any breach of certain rights **even in circumstances that would otherwise be obvious instances of breach** and must therefore be appreciated for what it is: a limit on certain guaranteed rights, in the present instance, as far as homosexuals are concerned.<sup>7</sup> [emphasis added]

In resisting the repeal of sections 76, 77 and 79 of the OAPA and entrenching a savings law clause within its constitution with the aim of preventing any judicial oversight, Jamaica has become a regional outlier.

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<sup>4</sup> *Maurice Arnold Tomlinson v. the Attorney General of Jamaica*, Claim No. 2015 HCV 05731.

<sup>5</sup> *Ibid*, Pettigrew-Collins J, at paragraph 223.

<sup>6</sup> *Ibid*, Batts J, at paragraph 64.

<sup>7</sup> *Ibid*, Pettigrew-Collins J, at paragraph 207.

# VIOLENCE AGAINST LGBT PEOPLE IN JAMAICA

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Despite the IACHR's recommendations to systematically address anti-LGBT violence, violence against LGBT people in Jamaica has continued to be commonplace over the three years to February 2024. There is chronic under-reporting of violence faced by LGBT people because of fear and lived experience of police inaction.

The IACHR decision emphasised that there is a link between buggery laws and human rights abuses against LGBT persons, to the extent that such laws invite discrimination and stigmatisation, which in turn contributes to the occurrence of violence and other abuses. The IACHR noted that by maintaining these laws, Jamaica contributed to the acts of violence suffered by Gareth Henry and Simone Edwards.

**IACHR decision, paragraphs 86–88**

In a 2023 national LGBT survey conducted by UNDP and USAID, 83 per cent of respondents stated that one of the key issues faced by LGBT people is their experience of violence due to prejudice and discrimination.<sup>8</sup> A vast majority of survey respondents reported high levels of exposure to violence recently, with 73 per cent expressing fear of being assaulted, threatened, or harassed purely for their sexual orientation or gender identity and expression.<sup>9</sup>

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<sup>8</sup> UNDP and USAID, Being LGBT in Jamaica: National Survey for Lesbian, Gay, Bisexual and transgender persons in Jamaica, at page 30, March 2023, Available at: [https://www.undp.org/sites/g/files/zskgke326/files/2023-11/being\\_lgbti\\_in\\_jamaica\\_final.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2023-11/being_lgbti_in_jamaica_final.pdf)

<sup>9</sup> Being LGBT in Jamaica: National Survey at page 30.

Rainbow Railroad, a Canadian NGO that assists persecuted LGBT people seeking asylum, reported that from 2021 to 2023, they received 867 requests from people in Jamaica for assistance to leave the country.<sup>10</sup>

Although not criminalised, women who have sex with women experience grave forms of gender-based violence and are subject to discrimination by the justice system.

The IACHR decision emphasised that, even though the buggery laws, “do not specifically address sexual acts between women, rampant homophobia puts women who have sex with women, or who do not conform to a more feminine gender identity, at risk. Moreover, trans persons, and gender non-conforming persons also experience disproportionate impact, given their visibility.”

**IACHR decision, paragraph 79**

Incidents of gender-based violence among the transgender community often go unreported and undocumented. Ninety per cent of respondents in a 2023 study conducted by TransWave Jamaica,<sup>11</sup> an NGO working to advance the wellbeing of the transgender community, expressed that they had no trust in the justice system as it has failed LGBT Jamaicans and is often discriminatory.<sup>12</sup>

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<sup>10</sup> Data directly provided to Human Dignity Trust by Rainbow Railroad in January 2024.

<sup>11</sup> TransWave Jamaica, Unpacking Gender based violence and its effects on the Jamaican trans community, 2023, Available at: <https://transwaveja.org/wp-content/uploads/2023/07/Research-Paper-Unpacking-Gender-Based-Violence-and-its-effects-on-the-Jamaican-Trans-community.pdf>

<sup>12</sup> We note that the sample size in this study was relatively small; a total of 38 participants, 53% of whom were cisgender persons in the LGBT community.

A 2022 USAID study on gender-based violence against the LGBT community found that the police force was discriminatory in failing to take reports and statements from transgender survivors.<sup>13</sup>

According to a global study, in Jamaica, LGBT sex workers are at a heightened risk of experiencing violence from clients, community members and the police, with little recourse to justice, due to the criminalisation of same-sex intimacy as well as sex work.<sup>14</sup>

The absence of a robust system of investigations, prosecutions and sanctions against individuals for such acts means that the Jamaican LGBT community faces immense threats.

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**13** USAID, Gender-based violence impunity regional study: Jamaica case study, February 2022; [https://pdf.usaid.gov/pdf\\_docs/PA00ZC1M.pdf](https://pdf.usaid.gov/pdf_docs/PA00ZC1M.pdf)

**14** Carmen H. Logie et. al, Exploring the Protective Role of Sex Work Social Cohesion in Contexts of Violence and Criminalisation: A Case Study with Gender-Diverse Sex Workers in Jamaica, IN Sex Work, Health and Human Right at page 80. Available at; [https://link.springer.com/chapter/10.1007/978-3-030-64171-9\\_5](https://link.springer.com/chapter/10.1007/978-3-030-64171-9_5)



**“I know what it is to live in fear. I know what it is to live in hiding, to be ostracised. I know what it feels like to be beaten and left for dead.”**

Gareth Henry, petitioner in the IACHR petition



# DISCRIMINATION IN ACCESSING PUBLIC SERVICES

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The continued criminalisation of same-sex intimacy also enhances discrimination in accessing public services, including healthcare and housing.

A 2023 national survey of LGBT people in Jamaica revealed that, despite the ease of access to healthcare services, LGBT people hesitated to utilise public hospitals due to fear of stigma and discrimination.<sup>15</sup> The survey also highlighted that more than half of all respondents (55 per cent) ‘did not disclose their sexual orientation or gender identity to healthcare or medical staff.’<sup>16</sup> These statistics speak to a generalised fear that is reinforced by criminalising laws and an absence of legal protections for LGBT people.

The Right Reverend Garth Minott, Suffragan Bishop of Kingston (Anglican), Jamaica, advocating for the repeal of the buggery laws, stated that the continued criminalisation of same-sex intimacy has a direct impact on public health in the Caribbean region, recognising that:

...[in] countries where such relationships are criminalised, almost one in four men who have sex with men are HIV-positive, whereas in those countries without such laws only 1 in 15 men are HIV-positive.

... community health practitioners, focused on delivery of health services, must be unfettered in the provision of information and tools for safe sex without fear that they are aiding and abetting a crime and liable for prosecution.<sup>17</sup>

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<sup>15</sup> Being LGBT in Jamaica: National Survey at page 43.

<sup>16</sup> Ibid.

<sup>17</sup> St. Vincent Times, Rt. Rev. G. Minott makes case for same-sex decriminalization in the region, 11 August 2023; <https://www.stvincenttimes.com/rt-rev-g-minott-makes-case-for-same-sex-decriminalization-in-the-region/>

The IACHR has recognised that the mere existence of buggery laws can impact mental health by creating anxiety, guilt and depression among LGBT persons affected by the law.

**IACHR decision, paragraph 86**

There is a dire need for psychological support in the healthcare system in Jamaica for the LGBT community, who are left unsupported and isolated when faced with trauma, discrimination and hardship.

Recent studies have highlighted the inadequacy of the healthcare system for mental health services. A TransWave Jamaica study carried out in 2023 revealed that the transgender community, who are often exposed to homophobic/transphobic violence, are in need of psychological support in the healthcare system.<sup>18</sup> A 2021 Audit of Mental Health Services conducted by Equality for All Foundation Jamaica (EFAF) revealed that, in a sample of 200 mental health service providers, 77 per cent (154) received no training on providing care for members of the LGBT community.<sup>19</sup> In the same audit, in a sample of 220 LGBT people, 63 per cent (138) indicated fear of the mental health services being unwelcoming to LGBT people as a barrier to accessing care.

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<sup>18</sup> TransWave Jamaica, Unpacking Gender based violence and its effects on the Jamaican trans community, 2023; <https://transwaveja.org/wp-content/uploads/2023/07/Research-Paper-Unpacking-Gender-Based-Violence-and-its-effects-on-the-Jamaican-Trans-community.pdf>

<sup>19</sup> Kali A.D Morgan and Tiffany L. Palmer, Audit of Mental Health and Psychosocial Support Services and Needs for LGBTQ+ Persons in Jamaica, 12 February 2021.

Criminalisation also marginalises LGBT people when seeking housing in Jamaica, contributing to insecurity and homelessness. Under the Jamaican Rent Restriction Act 1944, landlords have the power to evict tenants on the basis that their presence is: ‘a nuisance or annoyance to adjoining occupiers’ or constitutes ‘using the premises [...] **for an immoral or illegal purpose.**’<sup>20</sup>

Provisions of the Act, combined with the criminalisation of same-sex intimacy in the OAPA and widely held homophobic attitudes, empower landlords to refuse to rent, set exorbitantly high rents and even evict LGBT tenants because of their sexual orientation and/or gender identity.

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<sup>20</sup> Rent Restriction Act 1944, Section 25 (1)(c).

# RECOMMENDATIONS TO THE GOVERNMENT OF JAMAICA

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1. Institute effective measures to fully comply with and immediately implement all recommendations of the IACHR decision in *Gareth Henry and Edward Simone v. the Attorney General of Jamaica*.
2. Amend legislation to decriminalise consensual, same-sex intimacy by repealing sections 76, 77 and 79 of the 1864 Offences Against the Person Act.
3. Legislate to ensure protection against discrimination on the grounds of sexual orientation and gender identity, including against discriminatory violence and hate crimes.
4. Ensure prevention, investigation, punishment and reparation of all acts of violence faced by LGBT persons, including acts motivated by sexual orientation or gender identity.
5. Implement and monitor training programmes for law enforcement and other public agencies at regular intervals to ensure sensitisation to LGBT persons' experiences of discrimination.



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