



RESPONSES TO INFORMATION REQUESTS (RIRs)

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26 October 2006

JAM101671.E

Jamaica: Laws regarding homosexuality; applicable penalties and whether they are enforced.

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Specific same-sex sex acts between men are criminalized in Jamaica (Jamaica n.d.). Article 76 of Jamaica's *Offences Against the Person Act* makes "the abominable crime of buggery" punishable by imprisonment and hard labour for a maximum of ten years (ibid., Art. 76). Article 77 prescribes up to seven years of imprisonment, with or without hard labour, for attempted "buggery" (ibid., Art. 77). The term "buggery," According to Human Rights Watch (HRW) "generally refers to acts of anal intercourse and bestiality" (Nov. 2004, 21) but does not require the use of force for it to be considered an offence (J-FLAG n.d.). The term has the effect of criminalizing consensual sexual intercourse between men (HRW Nov. 2004, 12).

Article 79 of the *Offences Against the Person Act* punishes acts of gross indecency between two men, whether committed in public or private, with up to two years imprisonment with or without hard labour (Jamaica n.d.). Two non-governmental organizations and a newspaper report that gross indecency was generally interpreted to mean physical intimacy between men falling short of intercourse (J-FLAG n.d.; HRW Nov. 2004, 22; *The Guardian* 27 Apr. 2006).

The Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG), which is the principle non-governmental organization (NGO) advocating on behalf of sexual minorities in Jamaica, notes in its submission to parliament that there are no criminal provisions for acts of lesbianism (N.d.).

In a major investigative report, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*, published in November 2004, HRW explains that the frequency with which anti-sodomy laws are applied is not known, but that it found the laws to be in use (Nov. 2004, 22) during the course of its June 2004 investigations in Jamaica (HRW Nov. 2004, 10). A defence attorney in Jamaica who represented several gay clients informed HRW that he "always seem[ed] to have a case of a practicing gay man who is in court on account of his sexuality" (HRW Nov. 2004, 22). According to the attorney, charges were often motivated by the idea that homosexual men were prone to pedophilia (ibid.). He explained that prosecutions often failed due to lack of evidence, but that charges of homosexuality alone brought "terror" to defendants (ibid., 23). In its 2006 annual report, Amnesty International documents the case of two men sentenced to two years imprisonment with hard labour suspended for having committed "buggery" (23 May 2006). HRW notes that the Jamaican news media

publishes the names of men charged with "consensual buggery" and gross indecency to the public (Nov. 2004, 23). Police officials at different levels variously informed HRW that the sodomy laws were "seldom," "rarely," or "occasionally" enforced (ibid.).

HRW documented cases of threats of arrest by police, arbitrary arrest, incarceration, torture of men and in some cases women, and prosecution of individuals who were, or appeared to be, homosexual individuals (HRW Nov. 2004, 12, 21). HRW notes that women are also arrested by police for homosexual conduct (ibid.). J-FLAG explains that while no penal provisions exist for lesbian sexuality, lesbians in Jamaica are commonly known as "sodomite[s]," a word which is "derived from sodomy, the other word for buggery" (n.d.). J-FLAG indicates on its Web site that there are few, if any, cases where consensual heterosexual anal intercourse is prosecuted (n.d.).

The November 2004 HRW report emphasizes that the provisions of the *Offences Against the Person Act* criminalizing sex between men impede the delivery of human immunosuppressant virus (HIV) protection programs. HIV peer educators are arrested, and prisoners denied access to HIV prevention programs under the anti-sodomy legislation, as the disease is widely perceived to be a homosexual affliction (HRW Nov. 2004, 4).

According to the Human Rights Watch (HRW) Web site, in June 2005 the European Parliament called on Jamaica to repeal discriminatory anti-sodomy provisions in its legislation (June 2005). *The New York Times* reports that in November 2005, two members of the Jamaican legislature made a "revolutionary" move by calling for a parliamentary debate on the island's anti-sodomy laws (30 Nov. 2005). No further information on such a debate could be found by the Research Directorate within time constraints.

On 22 May 2006, as reported by HRW, *The Jamaica Gleaner* published the Deputy Solicitor General of Jamaica's opinion on whether or not Jamaica's anti-sodomy legislation should be repealed (HRW 26 May 2006). According to the Deputy Solicitor General, Jamaica is under no legal obligation to repeal the legislation as there is no international instrument that guarantees a right to homosexual sex (ibid.). HRW responded by affirming Jamaica's obligation to uphold "the equality of all people before the law, condemn all forms of discrimination, and protect the right to privacy" (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

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The New York Times. 30 November 2005. "AIDS, and Homophobia, in Jamaica."
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Additional Sources Consulted

Oral Sources: The Independent Jamaica Council for Human Rights (IJCHR) and the Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) did not provide information within the time constraints of this Response.

Internet Sites, including: Amnesty International (AI); British Broadcasting Corporation (BBC); European Country of Origin Information Network (ecoi.net); International Lesbian and Gay Association (ILGA); International Gay and Lesbian Human Rights Commission (IGLHRC); The Gully; *The Independent*; Jamaica Information Service (JIS); *The Jamaica Gleaner*; OutRage; PeterTatchell.net; Sodomy Laws; United Nations (UN) Division for the Advancement of Women (DAW); United Kingdom (UK) Home Office, Immigration and Nationality Directorate (IND).

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