
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES

DWAYNE JONES,

Victim,

--v.--

JAMAICA,

Respondent.

**PETITION PURSUANT TO ARTICLE 23 OF THE RULES OF PROCEDURE OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

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Perhaps we cannot prevent this world from being a world in which children are tortured. But we can reduce the number of tortured children. And if you don't help us, who else in the world can help us do this?

Albert Camus

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I. INTRODUCTION

1. On July 22, 2013, Dwayne Jones, a 16-year-old transgender minor,¹ was brutally attacked and killed by a mob near Montego Bay, Jamaica.² The teenager was stabbed, shot, run over by a car, and left to die by the side of the road merely for wearing a dress to a dance party.³ More than two-and-a-half years after this horrific murder, no arrests have been made in the case. By failing to properly investigate and prosecute Dwayne Jones' homicide, and by refusing to curtail rampant and systematic anti-LGBT discrimination and violence in that country, Jamaica has breached its obligations under the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"), and the American Convention on Human Rights (hereinafter "the American Convention").

II. JURISDICTION

2. This petition is filed pursuant to Article 23 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR").⁴ The Commission is competent to act on this petition under Articles 18, 19 and 20 of the IACHR Statute.⁵

III. STATEMENT OF FACTS

A. Jamaica's Systematic Failure to Protect Lesbian, Gay, Bisexual and Transgender (LGBT) Persons from Rampant Anti-LGBT Discrimination and Violence

3. Jamaica's human rights record was most recently assessed by the Organization of American States in the IACHR's 2014 Annual Report, released on May 7, 2015.⁶ In that report, the Commission expressed grave concern regarding "the continued acts of violence and discrimination toward vulnerable groups, including LGBTI persons."⁷ Violence and

¹ At the time of his death, Dwayne Jones was considered to be a "minor," and therefore a "child," under IACHR precedent. *See, e.g.*, IACHR, Report No. 9/00, Case 11,598, *Alonso Eugenio Da Silva* (Brazil), 24 February 2000, para. 1 ("The petition denounces the homicide of Alonso Eugenio da Silva, a minor aged 16, by a military policeman of the State of Rio de Janeiro, in a restaurant in Madureira, Rio de Janeiro, on March 8, 1992") (emphasis added), available at <http://www.cidh.oas.org/annualrep/99eng/Merits/Brazil11.598.htm>.

² *See* IACHR, *Annual Report of the Inter-American Commission on Human Rights 2014*: Chapter V Follow-Up of Recommendations Issued by the IACHR in its Country or Thematic Reports, May 7, 2015, para. 171 [hereinafter *IACHR 2014 Annual Report*], available at <http://www.oas.org/en/iachr/docs/annual/2014/TOC.asp>.

³ *In Jamaica, transgender teen killed by mob*, Associated Press, Aug. 11, 2013, available at <http://bigstory.ap.org/article/jamaica-transgender-teen-murdered-mob>.

⁴ *Rules of Procedure of the Inter-American Commission on Human Rights*, art. 23 (approved by the Commission at its 137th regular period of sessions, held from Oct. 28, 2009 to Nov. 13, 2009, and modified on Sept. 2, 2011 and during the 147th Regular Period of Sessions, held from Mar. 8, 2013 to Mar. 22, 2013, for entry into force on Aug. 1, 2013) [hereinafter *IACHR Rules of Procedure*], available at <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>. Petitioners do not request that their identity be withheld from the respondent under Article 28(2) of the IACHR Rules of Procedure.

⁵ *Statute of the Inter-American Commission on Human Rights*, O.A.S. Gen. Ass. Res. 447 (IX-0/79), Jan. 1, 1980 [hereinafter *IACHR Statute*], available at <http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp>.

⁶ *IACHR 2014 Annual Report*, *supra* note 2, at Chapter V.

⁷ *Id.* at para. 5.

discrimination against those in the LGBT community “is entrenched in Jamaican State institutions. Those who are not heterosexual or cisgender face political and legal stigmatization, police violence, an inability to access the justice system, as well as intimidation, violence, and pressure in their homes and communities.”⁸

4. The Commission noted that “acts of violence and discrimination against LGBT persons continue to be widespread and, in turn, pose a serious deterrent to victims, who then choose not to report these crimes.”⁹ In fact, LGBT persons in Jamaica are routinely ignored when they attempt to report acts of violence, or become themselves the victims of police abuse, including arbitrary detention, blackmail, extortion, threats, and cruel and degrading treatment. The Commission reported that “no investigative units have been designated for these violations and most of these crimes--if not all--remain in impunity.”¹⁰

5. The Commission specifically cited the case of Dwayne Jones, a transgender teenager and the subject of the current petition, who was brutally attacked and murdered by a mob at a dance party in Jamaica on July 22, 2013, noting that no arrests had been made in the case.¹¹ The Commission also cited the killing of two LGBT persons, which took place on June 13, 2012, whose bodies “were chopped or mutilated, and were found near several rocks with bloodstains.”¹² The Commission emphasized that “the State has the obligation to investigate such acts on its own initiative and to punish those responsible; and also to conduct an investigation that takes into account whether the murder was committed because of the gender expression, gender identity or sexual orientation of the victims.”¹³

6. The Commission recognized that many attacks against LGBT persons in Jamaica take the form of mob violence:

To mention only a few, in December 2005, a mob chased a gay man into Kingston harbor. To escape his attackers, he jumped into the water but, unable to swim, he was reported to have drowned. In February 2007, three gay men were viciously attacked with stones by a mob in Saint Andrew and had to seek refuge at a pharmacy. As police officers who tried to escort the men out were also attacked, the mob had to be dispersed with tear gas. Only a month later, a mob attacked the attendants of the funeral of a gay man. The church windows were smashed and the service suspended. When called, the police made no arrests and instead are reported to have joined the mob in jeering the gay men. . . . Further evidence indicates that other attacks like this took place in 2008. In 2012, an angry mob broke into a house to attack three gay men who were living together in Jones Town, Kingston.¹⁴

⁸ See IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144. Doc 12. August 10, 2012, para. 264 [hereinafter *IACHR 2012 Jamaica Report*], available at <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>.

⁹ *IACHR 2014 Annual Report*, *supra* note 2, at para. 165.

¹⁰ *Id.*

¹¹ *Id.* at para. 171.

¹² *Id.* at para. 170.

¹³ *Id.* at para. 170.

¹⁴ *Id.* at para. 173.

7. The Commission reiterated that Jamaica was obligated “to take action to prevent and respond to these human rights abuses and, additionally, to curtail the high rates of impunity as a result of an ineffective State response which leads to the chronic repetition of such crimes, leaving the victims and their families defenseless.”¹⁵

8. Non-governmental organizations, including Human Rights Watch, Human Rights First, Amnesty International, Freedom House, and the Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) have also conducted recent reviews of Jamaica’s human rights record, including its abysmal failure to protect LGBT persons.

9. On October 21, 2014, Human Rights Watch released a report entitled *Not Safe at Home: Violence and Discrimination Against LGBT People in Jamaica*.¹⁶ The report found that LGBT persons in Jamaica “are particularly vulnerable to violence. Many live in constant fear. They are taunted; threatened; fired from their jobs, thrown out of their homes; beaten, stoned, raped, and even killed.”¹⁷

10. In researching its report, Human Rights Watch interviewed 71 LGBT persons in Jamaica. Of those interviewed, more than half said they had been victims of some form of violence based on their sexual orientation or gender identity; nineteen had reported those crimes to the police, who only took formal statements in eight cases; and victims were aware of arrests by police in only 4 of the 56 cases of violence that Human Rights Watch documented.¹⁸ Reported acts of violence “included rape; being chopped with a machete; being choked; being stabbed with a knife; being shot with a gun; being hit with boards, pipes, sticks, chairs, or brooms; being attacked by groups ranging from 5 to 40 individuals; and being slapped in the face with hands or with guns.”¹⁹ Of those interviewed, 10 LGBT persons reported suffering mob attacks because of their sexual orientation. However, none of those individuals were aware of any investigation or arrests that were made in relation to those attacks.²⁰

11. The report noted that the Jamaican government “offers little in practical terms to prevent and protect against violence and discrimination, or to punish the perpetrators of crimes against LGBT people. . . . Serious rights abuses based on sexual orientation and gender identity continue, and justice for these crimes remains elusive.”²¹

¹⁵ *Id.* at para. 177. In a report released on December 17, 2014, the IACHR Rapporteur on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons documented numerous mob attacks on Jamaican LGBT persons, as well as individual knifings, stoning and shootings which resulted in serious injury and death. See IACHR, *An Overview of Violence Against LGBTI Persons: A Registry Documenting Acts of Violence Between January 1, 2013 and March 31, 2014*, Dec. 17, 2014 [hereinafter *IACHR Registry*], available at <http://www.oas.org/en/iachr/lgtbi/docs/Annex-Registry-Violence-LGBTI.pdf>.

¹⁶ *Not Safe at Home: Violence and Discrimination Against LGBT People in Jamaica*, Human Rights Watch (Oct. 21, 2014) [hereinafter *Not Safe at Home*], available at <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica>.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 21.

²⁰ *Id.* at 24.

²¹ *Id.* at 4.

12. The report found that “[l]esbian, gay, bisexual, and transgender persons in Jamaica continue to be killed, attacked, and threatened with violence. All too often, the police have been complacent, failing to prevent, punish, or even investigate many instances of targeted violence. In so doing, Jamaica has failed to protect the right to life and freedom from cruel, inhuman, and degrading treatment of LGBT people in Jamaica.”²²

13. Notably, the report found that the Jamaican police “do not appear to have followed up adequately on the July 2013 murder of Dwayne Jones, a gender non-conforming 16-year-old, who was beaten, stabbed, and shot to death in St. James by partygoers when they discovered her biological sex.”²³

14. The report concludes that “Jamaica has positive duties to prevent physical, mental, and, in particular, life-threatening violence against LGBT people, to investigate such incidents when they do happen, and to hold responsible those who committed them -- whether they are state agents or private individuals.”²⁴

15. More recently, on May 19, 2015, Human Rights First released a report entitled *The World as it Should Be: Advancing the Human Rights of LGBT People in Jamaica*.²⁵ The report found that “Jamaica is party to various international treaties that have been interpreted to guarantee protections for LGBT people. Nonetheless, LGBT Jamaicans often face serious violence and discrimination because of their sexual orientation or gender identity.”²⁶ The report also found that, in Jamaica, “LGBT people experience a climate of generalized societal homophobia. Lesbians, bisexual women, and transgender people face an additional threat of gender-based and/or sexual violence.”²⁷

16. The report noted that “[i]n 2013, teenager Dwayne Jones was brutally murdered after attending a party dressed in feminine attire. He was stabbed, beaten, shot, and run over by a car by a violent mob. The case attracted international attention and outrage. . . . Despite outrage at the national and international level, the case remains unsolved.”²⁸

17. The report concludes that “[t]he prevalence of homophobic attitudes within the police force, combined with the general inefficiency of the justice system, result in an overall lack of investigation into violence or discrimination against LGBT people.”²⁹

18. Amnesty International also addressed Jamaica’s human rights record in its recently released 2014/15 annual report. That review likewise found that “LGBTI organizations

²² *Id.* at 69.

²³ *Id.* at 29.

²⁴ *Id.* at 70.

²⁵ *The World as it Should Be: Advancing the Human Rights of LGBT People in Jamaica*, Human Rights First (May 19, 2015) [hereinafter *The World as it Should Be*], available at <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf>.

²⁶ *Id.* at 1.

²⁷ *Id.* at 1.

²⁸ *Id.* at 7.

²⁹ *Id.* at 9.

continued to report attacks, harassment and threats against individuals based on their real or perceived sexual orientation, which were not fully and promptly investigated.”³⁰

19. In *Freedom in the World 2015*, the annual report prepared by Freedom House, Jamaica’s failure to protect LGBT persons is again noted: “Harassment of and violence against LGBT (lesbian, gay, bisexual, and transgender) people remains a major concern and is frequently ignored by the police.”³¹

20. In December 2013, five months after the murder of Dwayne Jones, the Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) issued a report entitled *Homophobia and Violence in Jamaica*.³² J-FLAG noted that “[t]he socio-cultural and legal environment has contributed to the prevalence of discrimination and acts of violence against LGBT Jamaicans over the years. These incidents include, *inter alia*, murder, forced evictions, temporary and permanent displacement, beatings, and mob attacks.”³³

21. The report also noted that “[b]etween 2009 and 2012, a total of 231 reports were made to J-FLAG. Most incidents were related to assaults, physical attacks, and displacement from homes and communities. Other incidents included extortion and threats as well as sexual violence, particularly against lesbians and bisexual women.”³⁴

22. The report further noted that “[s]ince July 2013, subsequent to the murder of 16-year-old Dwayne Jones - a transgender teen in St James - there have been several news reports of brutal attacks perpetrated against LGBT people across the island.”³⁵

23. The report concludes that “discriminatory laws and the lack of specific protections continue to contribute to the incidence of discrimination, violence and other forms of abuse against LGBT people,”³⁶ and recommends that “[t]he police thoroughly investigate all crimes reported, whether committed by or against LGBT people so the perpetrators can be brought to justice.”³⁷

24. The discriminatory laws referenced in the J-FLAG report include Sections 76, 77 and 79 of Jamaica’s Offences Against the Person Act³⁸ which criminalize same sex intimacy between consenting adults.

³⁰ *Amnesty International Report 2014/15: The State of the World’s Human Rights*, Amnesty International (2015) at 205 [hereinafter *Amnesty International Report 2014/15*], available at <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>.

³¹ *Freedom in the World 2015*, Freedom House (2015) [hereinafter *Freedom in the World 2015*], available at <https://freedomhouse.org/report/freedom-world/2015/jamaica#.Vc5YBn3qWSo>.

³² *Homophobia and Violence in Jamaica*, Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG)(December 2013) [hereinafter *Violence in Jamaica*], available at <http://jflag.org/wp-content/uploads/2014/07/Homophobia-Violence-in-Jamaica-JFLAG-2013.pdf>.

³³ *Id.* at 1.

³⁴ *Id.* at 2.

³⁵ *Id.* at 1.

³⁶ *Id.* at 3.

³⁷ *Id.* at 4.

³⁸ “Section 76 of the Offences against the Person Act establishes that ‘[w]hosoever shall be convicted of the abominable crime of buggery [anal intercourse] committed either with mankind or with any animal, shall be liable to

25. According to the IACHR, Jamaica's legislation criminalizing consensual same sex intimacy "may contribute to an environment that, at best, does not condemn, and at worst condones discrimination, stigmatization and violence" against LGBT persons.³⁹ The IACHR has noted that the Offenses Against the Person Act "provides a social sanction for abuse, as LGBTI persons are already thought of as engaged in illegal activity. Because LGBTI individuals are believed to be engaged in criminal activity, it is logical to infer that police are less likely to investigate crimes against them."⁴⁰ The IACHR concludes that "criminalization legislation has a negative impact on the defense for human rights, restricts access to justice and fuels intolerance."⁴¹ Jamaica has failed to repeal those sections of the Offences against the Person Act which criminalize same sex intimacy between consenting adults, despite specific and repeated recommendations issued by the IACHR⁴² and other international human rights monitoring bodies.⁴³

B. Jamaica's Specific Failure to Properly Investigate the Murder of LGBT Teenager Dwayne Jones

26. In the early morning hours of July 22, 2013, Dwayne Jones, a 16-year-old transgender minor, was brutally attacked and killed near Montego Bay, Jamaica.⁴⁴ News outlets reported that the teenager was at a dance party when he was set upon by a mob,⁴⁵ and that his body was found by the roadway "with multiple stab wounds and a gunshot wound."⁴⁶

27. News outlets further reported that the homicide took place in the "small riverside community of Irwin" and that at least 300 people were at the party where Dwayne Jones was murdered.⁴⁷ Police were immediately summoned⁴⁸ and reportedly collected 14 statements from witnesses.⁴⁹ At the time, a police officer identified as Deputy Superintendent of Police Steve Brown is quoted as saying: "We are following some leads so we sincerely hope that we will be

be imprisoned and kept to hard labour for a term not exceeding ten years.' Section 77 criminalizes the attempt to commit the crime of 'buggery', while section 79 criminalizes as a misdemeanor the commission by a man, in public or private, of 'any act of gross indecency with another male person.'" See *IACHR 2014 Annual Report*, *supra* note 2, at para. 154.

³⁹ *Id.* at para. 156.

⁴⁰ See *IACHR 2012 Jamaica Report*, *supra* note 8, at para. 271.

⁴¹ See *IACHR 2014 Annual Report*, *supra* note 2, at para. 157.

⁴² See *IACHR 2012 Jamaica Report*, *supra* note 8, at para. 305(a).

⁴³ See *IACHR 2014 Annual Report*, *supra* note 2, at para. 155.

⁴⁴ *Id.* at para. 171.

⁴⁵ *J-FLAG condemns mob killing of alleged MoBay cross-dresser*, Jamaica Gleaner, July 23, 2013, available at <http://jamaica-gleaner.com/power/46697>.

⁴⁶ *Police probe St James teen murder*, Jamaica Gleaner, July 23, 2013, available at <http://jamaica-gleaner.com/power/46680>.

⁴⁷ *In Jamaica, transgender teen killed by mob*, Associated Press, Aug. 11, 2013, available at <http://bigstory.ap.org/article/jamaica-transgender-teen-murdered-mob>.

⁴⁸ *Police probe St James teen murder*, Jamaica Gleaner, July 23, 2013, available at <http://jamaica-gleaner.com/power/46680>.

⁴⁹ *Police: Arrest soon in cross-dresser's death*, Jamaica Observer, Aug. 14, 2013, available at http://www.jamaicaobserver.com/news/Police--Arrest-soon-in-cross-dresser-s-death_14870714. See also J-FLAG, *Promoting Respect for Diversity: Annual Report 2013*, at 9, available at <http://jflag.org/wp-content/uploads/2014/08/J-FLAG-Annual-Report-2013.pdf>.

able to make an arrest in the matter very soon.”⁵⁰ However, more than two years later, no arrests had been made in the case⁵¹ despite the fact that, under Jamaican law, any participation in the mob attack on Dwayne Jones would be sufficient to impose criminal liability for acts carried out by other participants in the attack, including criminal liability for homicide.⁵²

28. Two eyewitnesses, identified as Dwayne Jones’ housemates, who were present during the attack, have spoken with news outlets about the murder.⁵³ These witnesses stated that they arrived at the party with Dwayne Jones by taxi at approximately 2:00 a.m. Sometime later, Dwayne Jones, who was dressed in women’s clothing, was confronted by several partygoers who asked “Are you a woman or a man?” followed by verbal abuse in the form of anti-LGBT slurs and epithets.⁵⁴ When he tried to escape, Dwayne Jones was beaten and stabbed. According to one of these witnesses, who was also attacked, Dwayne Jones “was viciously assaulted and apparently half-conscious for some two hours before another sustained attack finished him off.”⁵⁵

29. News outlets at the time predicted that Dwayne Jones’ murder would not be properly investigated, reporting that “[h]omophobia and intolerance of non-traditional sexual practices run deep in Jamaican culture. . . . As a result, the Jamaican police and government have a poor record of investigating crimes committed against gays, cross-dressers and other sexual minorities.”⁵⁶

30. As it turned out, Jamaica’s investigation of Dwayne Jones’ murder was neither prompt nor thorough; it suffered from a lack of resources, professionalism and expertise; it failed to provide protection from intimidation and violence for witnesses; it did not allow an opportunity for interested parties to give evidence; it failed to culminate in a written report on the methods and findings of the investigation and made public within a reasonable period of time; and it did not bring to justice persons identified by the investigation as having taken part in Dwayne Jones’ murder.

⁵⁰ *Police: Arrest soon in cross-dresser's death*, Jamaica Observer, Aug. 14, 2013, available at http://www.jamaicaobserver.com/news/Police--Arrest-soon-in-cross-dresser-s-death_14870714.

⁵¹ *LGBT Jamaicans Holding First Gay Pride Celebration on Island*, N.Y. Times, Aug. 4, 2015, available at http://www.nytimes.com/aponline/2015/08/04/world/americas/ap-cb-jamaica-gay-pride.html?_r=0.

⁵² See, e.g., *Jaffari Morris v. R.*, [2010] JMCA Crim 50, para. 56 (“it is sufficient to found a conviction for murder for a secondary party to have realized that in the course of the joint enterprise the primary party might kill with intent to do so or with intent to cause grievous bodily harm”), available at http://www.courtsofappeal.gov.jm/sites/default/files/judgments/Morris%20_Jaffari_%20v%20Regina.pdf.

Consequently, Jamaica’s ostensible defense that it is difficult to determine “which person or persons landed the fatal blow” obfuscates the state’s actual burden of proof. See *IACHR 2014 Annual Report*, *supra* note 2, at para. 176.

⁵³ *In Jamaica, transgender teen killed by mob*, Associated Press, Aug. 11, 2013, available at <http://bigstory.ap.org/article/jamaica-transgender-teen-murdered-mob>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Boom Bye Bye: Murder Of Cross-Dresser Lifts Lid On Jamaica’s Violent Homophobia*, Int’l. Bus. Times, Aug. 2, 2013, available at <http://www.ibtimes.com/boom-bye-bye-murder-cross-dresser-lifts-lid-jamaicas-violent-homophobia-1370173>. As noted above (in paragraphs 4 through 8 of this petition), the IACHR has expressed grave concern regarding this pervasive culture of impunity in Jamaica which results from an ineffective--and oftentimes nonexistent--police response to anti-LGBT violence.

IV. ARGUMENT

A. The American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights, Apply to All Persons Equally, Regardless of Sexual Orientation or Gender Identity

31. The human rights and fundamental freedoms set forth in the American Declaration of the Rights and Duties of Man⁵⁷ and the American Convention on Human Rights⁵⁸ apply to all persons equally, regardless of sexual orientation or gender identity. Article II of the American Declaration specifically states that “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.” Article 1(1) of the American Convention provides that State Parties⁵⁹ to the Convention “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

32. All individuals, including lesbian, gay, bisexual and transgender (LGBT) people, are afforded the same protections provided for by those documents, including the rights to life, liberty and personal security.

33. The Inter-American Court of Human Rights (hereinafter “the Inter-American Court”) has repeatedly held that “the principle of equality and non-discrimination is fundamental for the safeguard of human rights in both international law and domestic law.”⁶⁰

⁵⁷ American Declaration of the Rights and Duties of Man, OEA/Ser. L./V./II.23, doc. 21, rev. 6 (1948) [hereinafter *American Declaration*], available at <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>. Adopted in 1948, the American Declaration is the first document to define the human rights protected by the OAS Charter. See Robert K. Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, 31 Hum. Rts. Q. 856, 860 (2009). The American Declaration recognizes, *inter alia*, that all persons are born free and equal, in dignity and in rights (Preamble); that every human being has the right to life, liberty and personal security (art. I); and that all persons are equal before the law and have rights and duties without distinction as to race, sex, language, creed, or any other factor (art. II).

⁵⁸ American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter *American Convention*], available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm. Twenty-three OAS member states are bound by the American Convention, including Jamaica, which ratified the Convention on July 19, 1978. See http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm. See also Monica Pinto, *The Role of the Inter-American Commission and Court on Human Rights in the Protection of Human Rights: Achievements and Contemporary Challenges*, Hum. Rts. Brief, Winter 2013 at 34, 38 n.25 (2013), available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1840&context=hrbrief>. Article 24 (Right to Equal Protection) of the American Convention further states that “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”

⁵⁹ An individual state that has ratified the Convention is referred to as a “State Party” and the plural can be “States Party,” “State Parties” or “States Parties.” Hereinafter, all plural references will have the same meaning.

⁶⁰ See, e.g., I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A, No. 18, para. 173.3, available at https://www1.umn.edu/humanrts/iachr/series_A_OC-18.html.

34. The Inter-American Court has stated that “the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified.”⁶¹

35. The Inter-American Court specifically held, in the *Case of Atala Riffo and Daughters v. Chile*,⁶² that sexual orientation and gender identity are protected categories under the American Convention:

Taking into account the obligations of respect and guarantee under Article 1(1) of the American Convention, the criteria of interpretation established under article 29 of this Convention, the text of the Vienna Convention on the Law of Treaties, the OAS General Assembly Resolutions, the standards established by the European Court and the United Nations mechanisms, ... the Inter-American Court affirms that the sexual orientation and gender identity of persons are protected categories under the Convention.⁶³

36. The IACHR has explained that “various international conventions and treaties define discrimination as any distinction, exclusion, restriction or preference made on the basis of any attribute of the person and whose effect or purpose is to impair or nullify the recognition, enjoyment or exercise, on a basis of equality, of human rights and fundamental freedoms.”⁶⁴

37. The IACHR has further explained that “sexual orientation and gender identity are covered under the phrase ‘any other social condition’ that appears in Article 1(1) of the American Convention on Human Rights.”⁶⁵ Hence, any difference in treatment based on sexual orientation and gender identity is suspect and presumed to be incompatible with the American Convention.

38. Discrimination based on sexual orientation, gender identity or gender expression includes “any distinction, exclusion, restriction or preference made against a person on these grounds, which has the effect or the purpose--whether *de jure* or *de facto*--of impairing or nullifying the recognition, enjoyment or exercise, on the basis of equality, of human rights and fundamental

⁶¹ I/A Court H.R. *Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984, Series A, No. 4, para. 55, available at https://www1.umn.edu/humanrts/iachr/b_11_4d.htm.

⁶² I/A Court H.R. *Case of Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012, Series C No. 239, para. 91, available at <https://www1.umn.edu/humanrts/iachr/C/239-ing.html>.

⁶³ See IACHR, *Sexual Orientation, Gender Identity and Gender Expression: Some Terminology and Relevant Standards*, CP/CAAP-INF. 166/12, 23 April 2012, note xlviii (Free Translation of the IACHR), available at http://www.oas.org/dil/CP-CAJP-INF_166-12_eng.pdf.

⁶⁴ *Id.* at para. 26.

⁶⁵ *Id.* at para. 29.

freedoms, taking into account the social and cultural attributes that have been associated with those categories.”⁶⁶

39. The IACHR specifically held that those sections of Jamaica’s Offences against the Person Act which criminalize same sex intimacy between consenting adults violate the American Convention.⁶⁷

40. The OAS General Assembly has similarly reaffirmed that, under the American Declaration and the American Convention, every human being has the right to life, liberty, and security of person without distinction as to race, sex, language, creed, or any other factor. The OAS General Assembly has also categorically rejected discrimination against LGBT persons, and has actively sought to end violence and related human rights violations based on sexual orientation and gender identity. To that end, on June 5, 2014, the OAS General Assembly approved Resolution AG/RES. 2863 (XLIV-O/14) *Human Rights, Sexual Orientation, and Gender Identity and Expression*, regarding the treatment of LGBT persons within OAS member states.⁶⁸

41. Resolution AG/RES. 2863 (XLIV-O/14) condemns all acts of discrimination and violence committed against persons because of their sexual orientation and gender identity, and urges OAS member states “to strengthen their national institutions with a view to preventing and investigating these acts and violations and ensuring due judicial protection for victims on an equal footing and that the perpetrators are brought to justice.”⁶⁹

42. Resolutions AG/RES. 2435 (XXXVIII-O/08),⁷⁰ AG/RES. 2504 (XXXIX-O/09),⁷¹ AG/RES. 2600 (XL-O/10),⁷² AG/RES. 2653 (XLI-O/11),⁷³ AG/RES. 2721 (XLII-O/12),⁷⁴ and AG/RES. 2807 (XLIII-O/13)⁷⁵ likewise condemn acts of discrimination and violence committed against individuals because of their sexual orientation and gender identity; encourage OAS member states to take all necessary measures to ensure that acts of violence and related human

⁶⁶ *Id.* at para. 27. See also IACHR, Report No. 5/14, Case 12,841, *Angel Alberto Duque* (Colombia), 2 April 2014, para. 67, available at <http://www.oas.org/en/iachr/decisions/court/12841FondoEn.pdf>; see also IACHR, Report No. 81/13, Case 12,743, *Homero Flor Freire* (Ecuador), 4 Nov. 2013, para. 90, available at <http://www.oas.org/en/iachr/decisions/court/12743FondoEn.pdf>.

⁶⁷ See *IACHR 2012 Jamaica Report*, *supra* note 8, at para. 305(a).

⁶⁸ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity and Expression*, AG/RES/2863 (XLIV-O/14) (June 5, 2014), available at <http://www.oas.org/en/iachr/lgtbi/docs/AG-RES2863-XLIV-O-14eng.pdf>.

⁶⁹ *Id.* at para. 3.

⁷⁰ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES/2435 (XXXVIII-O/08) (June 3, 2008).

⁷¹ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2504 (XXXIX-O/09) (June 4, 2009).

⁷² Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2600 (XL-O/10) (June 8, 2010).

⁷³ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2653 (XLI-O/11) (June 7, 2011).

⁷⁴ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2721 (XLII-O/12) (June 4, 2012).

⁷⁵ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity and Expression*, AG/RES. 2807 (XLIII-O/13) (June 6, 2013).

rights violations are not committed against persons because of their sexual orientation and gender identity; and urge OAS member states to ensure that acts of violence and human rights violations committed against individuals because of their sexual orientation and gender identity are investigated and that their perpetrators are brought to justice.

B. Jamaica’s Systematic Failure to Protect LGBT Persons and, in Particular, Dwayne Jones, from Rampant Anti-LGBT Discrimination and Violence, Violates Jamaica’s Obligations under Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4(1) (Right to Life), Article 5(1) (Right to Humane Treatment), Article 7(1) (Right to Personal Liberty), Article 11 (Right to Privacy), Article 13(1) (Freedom of Thought and Expression), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection) of the American Convention on Human Rights

1. State Parties’ Obligation to Protect Fundamental Rights

43. Under Article 1(1) (Obligation to Respect Rights) of the American Convention,⁷⁶ State Parties are obligated to ensure that all persons subject to their jurisdiction are able to enjoy the full exercise of their rights and freedoms. The Inter-American Court has held that Article 1(1) implies the duty “to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”⁷⁷

44. Article 2 (Domestic Legal Effects) of the American Convention⁷⁸ defines the scope of the duty to ensure “the free and full enjoyment of human rights.” Article 2 requires “the adoption of measures of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.

⁷⁶ See *American Convention*, *supra* note 58. Article 1(1) (Obligation to Respect Rights) of the American Convention provides that

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

⁷⁷ I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988, Series C No. 4, para. 166, available at http://www1.umn.edu/humanrts/iachr/b_11_12d.htm.

⁷⁸ See *American Convention*, *supra* note 58. Article 2 (Domestic Legal Effects) of the American Convention provides that

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

Furthermore, adoption of these measures becomes necessary when there is evidence of practices that are violations of the American Convention in any way.”⁷⁹

45. In *Jessica Lenahan (Gonzales) v. United States*,⁸⁰ the IACHR clarified that States must adopt all measures necessary to guarantee the effective enjoyment of fundamental rights:

In practice this means that States have the obligation to adopt the measures necessary to recognize and guarantee the effective equality of all persons before the law; to abstain from introducing in their legal framework regulations that are discriminatory towards certain groups either on their face or in practice; and to combat discriminatory practices.⁸¹

46. The obligation to adopt measures to prevent the violation of fundamental rights “involves all legal, political, administrative and cultural measures for the promotion of the protection of human rights that ensure that their violation be considered and treated as a punishable offence for the perpetrators.”⁸² Moreover, “States must adopt positive and specific measures in response to the specific needs of those who require protection because of their personal profile or their current situation. States have the obligation to guarantee the conditions to ensure that violations of these inalienable rights do not occur.”⁸³ In situations of serious and systematic violations of human rights, “the State’s obligation to adopt positive measures of prevention and protection under Article 1(1) of the American Convention are enhanced.”⁸⁴

2. State Responsibility for Acts Committed by Private Individuals

47. Persons may see their fundamental rights compromised “either from the behavior of State agents or from conduct perpetrated by individuals which, if not clarified generates State responsibility for non-fulfillment of the obligation to provide judicial protection.”⁸⁵ In the case of persons in especially vulnerable situations, “State responsibility also arises because of the lack of measures to prevent harm.”⁸⁶

48. Under the American Convention, State Parties may be held responsible for human rights violations committed by private individuals and third parties.⁸⁷ As the Inter-American Court has held:

⁷⁹ IACHR, *Report on Citizen Security and Human Rights*, Dec. 31, 2009, para. 37 [hereinafter *IACHR Report on Citizen Security*], available at <https://www.cidh.oas.org/pdf%20files/SEGURIDAD%20CIUDADANA%202009%20ENG.pdf>.

⁸⁰ IACHR, Report No. 80/11, Case 12,626, *Jessica Lenahan (Gonzales)* (United States), 21 July 2011, para. 108, available at <http://www.cidh.oas.org/casos/11.eng.htm> & http://www.oas.org/en/iachr/media_center/PReleases/2011/092.asp

⁸¹ *Id.* at para. 109.

⁸² *IACHR Report on Citizen Security*, *supra* note 79, at para. 41.

⁸³ *Id.* at para. 43.

⁸⁴ *Id.* at para. 44.

⁸⁵ *Id.* at para. 38.

⁸⁶ *Id.*

⁸⁷ Although some OAS member states have interpreted their domestic laws and reached a different conclusion, *see, e.g., DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989) (holding that the Due Process Clause in the United States Constitution does not impose an affirmative obligation on the state to “guarantee ...

Said international responsibility may be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention.⁸⁸

49. States must adopt positive and specific measures in response to the specific needs of those who require protection because of their personal profile or their current situation.⁸⁹ This obligation extends to the positive duty of the authorities “to adopt preventive operative measures to protect an individual or group of individuals, whose lives are at risk of criminal offenses by other individuals.”⁹⁰

3. Jamaica’s Breach of the Duty to Protect LGBT Persons and, in particular, Dwayne Jones, From Rampant Anti-LGBT Discrimination and Violence

50. Jamaica’s systematic failure to protect LGBT persons and, in particular, Dwayne Jones, from rampant anti-LGBT discrimination and violence, violates Jamaica’s obligations under Article 1(1) (Obligation to Respect Rights),⁹¹ Article 2 (Domestic Legal Effects),⁹² Article 4(1) (Right to Life),⁹³ Article 5(1) (Right to Humane Treatment),⁹⁴ Article 7(1) (Right to Personal Liberty),⁹⁵ Article 11 (Right to Privacy),⁹⁶ Article 13(1) (Freedom of Thought and Expression),⁹⁷

certain minimal levels of safety and security” for individuals at risk of private, third-party violence), for purposes of the present petition, the American Declaration and the American Convention are controlling.

⁸⁸ I/A Court of H.R., “*Mapiripán Massacre*” v. *Colombia Case*. Judgment of September 15, 2005. Series C No. 134, para. 111, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_134_ing.pdf.

⁸⁹ *IACHR Report on Citizen Security*, *supra* note 79, at para. 43.

⁹⁰ *Id.* at para. 43.

⁹¹ *See American Convention*, Article 1(1) (Obligation to Respect Rights), *supra* note 76.

⁹² *See American Convention*, Article 2 (Domestic Legal Effects), *supra* note 78.

⁹³ *See American Convention*, Article 4(1) (Right to Life), *infra* note 113.

⁹⁴ *See American Convention*, *supra* note 58. Article 5(1) (Right to Humane Treatment) of the American Convention provides that “Every person has the right to have his physical, mental, and moral integrity respected.”

⁹⁵ *See American Convention*, *supra* note 58. Article 7(1) (Right to Personal Liberty) of the American Convention provides that “Every person has the right to personal liberty and security.”

⁹⁶ *See American Convention*, *supra* note 58. Article 11 (Right to Privacy) of the American Convention provides that

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

Article 19 (Rights of the Child),⁹⁸ Article 24 (Equal Protection),⁹⁹ and Article 25(1) (Right to Judicial Protection)¹⁰⁰ of the American Convention:

- (a) Jamaica has failed to act with due diligence to eliminate anti-LGBT laws, norms and practices, thereby violating Jamaica's obligations, and Dwayne Jones' rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection);
- (b) Jamaica has failed to act with due diligence to adopt laws, norms and practices necessary to guarantee the effective enjoyment of fundamental rights by LGBT persons, thereby violating Jamaica's obligations, and Dwayne Jones' rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection);
- (c) Jamaica has failed to act with due diligence to prevent anti-LGBT discrimination and violence, thereby violating Jamaica's obligations, and Dwayne Jones' rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4(1) (Right to Life), Article 5(1) (Right to Humane Treatment), Article 7(1) (Right to Personal Liberty), Article 11 (Right to Privacy), Article 13(1) (Freedom of Thought and Expression), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection);
- (d) Jamaica has failed to act with due diligence to investigate anti-LGBT discrimination and violence, thereby violating Jamaica's obligations, and Dwayne Jones' rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4(1) (Right to Life), Article 5(1) (Right to Humane Treatment), Article 7(1) (Right to Personal Liberty), Article 11 (Right to Privacy), Article 13(1) (Freedom of Thought and Expression), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection);

⁹⁷ See *American Convention*, *supra* note 58. Article 13(1) (Freedom of Thought and Expression) of the American Convention provides that

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

⁹⁸ See *American Convention*, *supra* note 58. Article 19 (Rights of the Child) of the American Convention provides that "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

⁹⁹ See *American Convention*, *supra* note 58. Article 24 (Equal Protection) of the American Convention provides that "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

¹⁰⁰ See *American Convention*, Article 25(1) (Right to Judicial Protection) *infra* note 103.

- (e) Jamaica has failed to act with due diligence to prosecute anti-LGBT discrimination and violence, thereby violating Jamaica's obligations, and Dwayne Jones' rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4(1) (Right to Life), Article 5(1) (Right to Humane Treatment), Article 7(1) (Right to Personal Liberty), Article 11 (Right to Privacy), Article 13(1) (Freedom of Thought and Expression), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection);
- (f) Jamaica has failed to act with due diligence to punish anti-LGBT discrimination and violence, thereby violating Jamaica's obligations, and Dwayne Jones' rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4(1) (Right to Life), Article 5(1) (Right to Humane Treatment), Article 7(1) (Right to Personal Liberty), Article 11 (Right to Privacy), Article 13(1) (Freedom of Thought and Expression), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection).

C. Jamaica's Specific Failure to Properly Investigate the Murder of Dwayne Jones Violates Jamaica's Obligations under Article 1(1) (Obligation to Respect Rights), Article 4(1) (Right to Life), Article 8(1) (Right to a Fair Trial), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection) of the American Convention on Human Rights

1. State Parties' Obligation to Investigate Violations of Fundamental Rights

51. The duty of States to investigate cases of violations of fundamental rights arises from the general obligation to guarantee the rights established in Article 1(1) (Obligation to Respect Rights)¹⁰¹ of the American Convention, together with the due process and judicial protection guarantees set forth in Article 8(1) (Right to a Fair Trial)¹⁰² and Article 25(1) (Right to Judicial Protection).¹⁰³

¹⁰¹ See *American Convention*, Article 1(1) (Obligation to Respect Rights), *supra* note 76.

¹⁰² See *American Convention*, *supra* note 58. Article 8(1) (Right to a Fair Trial) of the American Convention provides that

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹⁰³ See *American Convention*, *supra* note 58. Article 25(1) (Right to Judicial Protection) of the American Convention provides that

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights

In light of this duty, the authorities must investigate conduct affecting the enjoyment of the rights protected in the American Convention and subject to public prosecution, as soon as they become aware of them. This investigation must be carried out, without delay, by all available legal means with the aim of determining the truth and the investigation, prosecution and punishment of the perpetrators.¹⁰⁴

52. The Inter-American Court has held that, as a result of the obligation to guarantee rights and freedoms, States must “prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”¹⁰⁵

53. The State is obligated to investigate every situation involving a violation of the rights protected by the Convention:

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.¹⁰⁶

54. The duty to investigate human rights violations is a positive obligation of the States, “which continues in effect until it is completely fulfilled.”¹⁰⁷ The investigation “not only must be carried out within a reasonable timeframe by competent, independent and impartial tribunals; it must also be exhaustive, serious and effective.”¹⁰⁸

55. States have a duty to conduct an exhaustive, serious and effective investigation “regardless of whether those responsible for the violations of rights are public agents, private

recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹⁰⁴ *IACHR Report on Citizen Security*, *supra* note 79, at para. 45.

¹⁰⁵ I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988, Series C No. 4, para. 166, available at http://www1.umn.edu/humanrts/iachr/b_11_12d.htm.

¹⁰⁶ See IACHR, Report No. 54/01, Case 12,051, *Maria Da Penha Maia Fernandes* (Brazil), 16 April 2001, para. 42, available at http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Brazil12.051.htm#_ftn16. The report further states (at paragraph 56) that

Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices.

¹⁰⁷ IACHR, *Special Study on Murder of Journalists*, March 8, 2008, para. 32 [hereinafter *IACHR Study on Murder of Journalists*], available at <http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf>.

¹⁰⁸ *Id.* at para. 34.

individuals or groups.”¹⁰⁹ As the Inter-American Court held in *Velásquez Rodríguez v. Honduras*, “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified), can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”¹¹⁰

56. When the obligation to investigate is not met, the result is impunity, which

not only constitutes in its own right a breach of the obligation to guarantee the free and full exercise of human rights; it also fosters the chronic repetition of violations of these rights and the total failure to defend victims and their family members. In this regard, impunity also runs contrary to the general obligation of the State to prevent such violations. Thus, a serious, rigorous and effective investigation is a fundamental element and a precondition for the protection of the rights that are adversely affected or invalidated by these situations.¹¹¹

2. State Parties’ Special Obligation to Investigate Violations of the Right to Life

57. The IACHR has stated that “[t]he most basic of the human rights protected in the inter-American and other human rights systems is the right to life, given that without complete respect for this right it is impossible to effectively guarantee or have full enjoyment of any other human rights or freedoms.”¹¹²

58. Because of the fundamental role assigned to the right to life,¹¹³ “States have the obligation to guarantee the creation of conditions that are required so that violations of this right do not arise, and, in particular, they have the duty to prevent its agents or private individuals from attempting to violate this right.”¹¹⁴

59. In this regards, the Inter-American Court has held that

compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, does not only presuppose that no person can be arbitrarily deprived of life (negative duty), but also requires, pursuant to its

¹⁰⁹ *Id.*

¹¹⁰ I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988, Series C No. 4, para. 172, available at http://www1.umn.edu/humanrts/iachr/b_11_12d.htm.

¹¹¹ See IACHR, *Special Study on Murder of Journalists*, March 8, 2008, supra note 107, at para. 72.

¹¹² See IACHR, Report No. 68/06, Case 12,477, *Lorenzo Enrique Copello Castillo et al.* (Cuba), 21 October 2006, para. 116, available at <https://www.cidh.oas.org/annualrep/2006eng/CUBA.12477eng.htm>.

¹¹³ See *American Convention*, supra note 58. Article 4(1) (Right to Life) of the American Convention provides that

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

¹¹⁴ See IACHR, *Special Study on Murder of Journalists*, March 8, 2008, supra note 107, at para. 50.

obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction.¹¹⁵

60. The protection of the right to life likewise imposes on the States “the obligation to seriously and thoroughly investigate the circumstances that could have led to the violation of this right.”¹¹⁶ Consequently, the Inter-American Court has held that “one of the conditions to effectively ensure the right to life is necessarily reflected in the duty to investigate abridgments of said rights.”¹¹⁷ Any failure in the investigation “that affects the ability to establish the cause of death or to identify the actual perpetrators or masterminds of the crime will constitute a failure to comply with the obligation to protect the right to life.”¹¹⁸

3. Jamaica’s Breach of the Duty to Properly Investigate the Murder of Dwayne Jones

61. Jamaica’s specific failure to properly investigate the murder of Dwayne Jones violates Jamaica’s obligations under Article 1(1) (Obligation to Respect Rights),¹¹⁹ Article 4(1) (Right to Life),¹²⁰ Article 8(1) (Right to a Fair Trial),¹²¹ Article 19 (Rights of the Child),¹²² Article 24 (Equal Protection),¹²³ and Article 25(1) (Right to Judicial Protection)¹²⁴ of the American Convention:

- (a) Jamaica has failed to act with due diligence to conduct an exhaustive, serious and effective investigation of the murder of Dwayne Jones, thereby violating Jamaica’s obligations, and Dwayne Jones’ rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 4(1) (Right to Life), Article 8(1) (Right to a Fair Trial), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection);
- (b) Jamaica has failed to act with due diligence to prosecute those responsible for the murder of Dwayne Jones, thereby violating Jamaica’s obligations, and Dwayne Jones’ rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 4(1) (Right to Life), Article 8(1) (Right to a Fair Trial), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection);

¹¹⁵ I/A Court H.R., *Zambrano Vélez et al. v. Ecuador Case*. Judgment of July 4, 2007, Series C No. 166, para. 80, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_166_ing.pdf.

¹¹⁶ See IACHR, *Special Study on Murder of Journalists*, March 8, 2008, *supra* note 107, at para. 51.

¹¹⁷ I/A Court of H.R., *“Mapiripán Massacre” v. Colombia Case*. Judgment of September 15, 2005. Series C No. 134, para. 137, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_134_ing.pdf.

¹¹⁸ See IACHR, *Special Study on Murder of Journalists*, March 8, 2008, *supra* note 107, at para. 57.

¹¹⁹ See *American Convention*, Article 1(1) (Obligation to Respect Rights), *supra* note 76.

¹²⁰ See *American Convention*, Article 4(1) (Right to Life), *supra* note 113.

¹²¹ See *American Convention*, Article 8(1) (Right to a Fair Trial), *supra* note 102.

¹²² See *American Convention*, Article 19 (Rights of the Child) *supra* note 98.

¹²³ See *American Convention*, Article 24 (Equal Protection) *supra* note 99.

¹²⁴ See *American Convention*, Article 25(1) (Right to Judicial Protection) *supra* note 103.

- (c) Jamaica has failed to act with due diligence to punish those responsible for the murder of Dwayne Jones, thereby violating Jamaica's obligations, and Dwayne Jones' rights, under the American Convention, including Article 1(1) (Obligation to Respect Rights), Article 4(1) (Right to Life), Article 8(1) (Right to a Fair Trial), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection).

D. This Petition is Admissible Pursuant to the American Convention on Human Rights and the IACHR Rules of Procedure

1. Admissibility of the Petition

62. Article 44 of the American Convention states that "[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."¹²⁵ Article 23 of the IACHR Rules of Procedure further states that "[a]ny person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons," concerning alleged violations of a human right recognized in the American Declaration and the American Convention.¹²⁶ In the present case, petitioners are entitled, *de facto* and *de jure*, to lodge petitions before the Commission.

2. Competence of the Commission

63. The Commission is competent to receive petitions alleging human rights violations by Jamaica, which ratified the American Convention on July 19, 1978.¹²⁷ Because this petition identifies as the alleged victim an individual for whom Jamaica undertook to ensure the rights enshrined in the American Convention, the Commission is competent *ratione personae* to examine the petition. Because this petition alleges violations of rights taking place within the territory of Jamaica, the Commission is competent *ratione loci* to examine them. Because the petition is based upon facts occurring at a time when the obligations undertaken by Jamaica were in force, the Commission is competent *ratione temporis* to examine those claims. Finally, because the petition advances claims alleging violations of the American Convention by Jamaica, the Commission is competent *ratione materiae* to examine the petition.

3. Exhaustion of Domestic Remedies

64. Under Article 46 of the American Convention, and Article 31 of the IACHR Rules of Procedure, a petitioner is required to pursue and exhaust the remedies of the domestic legal system except in cases where (a) the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his or her rights has been denied access to the remedies under

¹²⁵ See *American Convention*, *supra* note 58.

¹²⁶ See *IACHR Rules of Procedure*, *supra* note 4.

¹²⁷ See *American Convention*, *supra* note 58 (Signatories and Ratifications).

domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment.¹²⁸

65. The Inter-American Court has held that only the domestic remedies suitable for remedying the violations alleged to have been committed must be exhausted:

A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.¹²⁹

66. The IACHR has explained that “when arbitrary deprivation of the right to freedom and to life are involved, the adequate remedy is an investigation and a criminal proceeding, which must be instituted and brought forward *ex officio* by the State in order to identify and punish those responsible. Additionally, the Commission has held that, as a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and safeguard the rights of every person, who in the context of the investigation may be regarded as a suspect.”¹³⁰

67. The IACHR has further explained that “in cases of alleged homicide – which is a criminal offense prosecutable *sua sponte*– the proper remedy is normally a criminal investigation and prosecution before the ordinary judicial system” and not a civil action.¹³¹ Indeed, in cases of homicide, such as the present case, “the remedy normally considered as adequate is the criminal investigation and trial of those allegedly responsible; a civil action cannot provide an integral remedy.”¹³² Because the present case involves the arbitrary deprivation of the right to life,¹³³ the appropriate domestic remedy is a thorough criminal investigation to be undertaken by the Jamaican government¹³⁴ followed by a trial of those identified by the investigation as having taken part in Dwayne Jones’ murder.

¹²⁸ See Article 46 of the American Convention, *supra* note 58; Article 31 of the IACHR Rules of Procedure, *supra* note 4.

¹²⁹ I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*, Judgment of July 29, 1988, Series C No. 1, para. 64, available at http://www1.umn.edu/humanrts/iachr/b_11_12d.htm.

¹³⁰ See IACHR, Report No. 5/15, Case 11,883, *Jhon Ricardo Ubate y Gloria Bogotá* (Colombia), 29 January 2015, para. 35, available at <https://www.oas.org/en/iachr/decisions/2015/COAD11883EN.pdf>.

¹³¹ See IACHR, Report No. 70/14, Petition 1453-06, *Maicon de Souza Silva, Renato da Silva Paixão et al.*, (Brazil), 25 July 2014, paras. 18-19, available at <https://www.oas.org/en/iachr/decisions/2014/BRAD1453-06EN.pdf>.

¹³² *Id.* at para. 19.

¹³³ The Commission has described the right to life “as the supreme right of the human being, respect for which the enjoyment of all other rights depends.” See IACHR, Report No. 80/11, Case 12,626, *Jessica Lenahan (Gonzales)* (United States), 21 July 2011, para. 112, available at <http://www.cidh.oas.org/casos/11.eng.htm> & http://www.oas.org/en/iachr/media_center/PReleases/2011/092.asp.

¹³⁴ “[T]he duty to investigate must be meaningful and must be assumed by the States as their own legal obligation, not as a step taken merely by private interests that depends on procedural initiatives by the victim or the victim’s family, or upon their offer of proof, without an effective search for truth by the government.” IACHR, *Special Study on Murder of Journalists*, March 8, 2008, *supra* note 107, at para. 32.

4. Timeliness of the Petition

68. Article 46(1)(b) of the American Convention requires that a petition be lodged within six months of the date that the party alleging a violation of his rights was notified of a final judgment.¹³⁵ However, in cases where exceptions to the requirement of exhaustion of domestic remedies apply, Article 32(2) of the Rules of Procedure of the Commission establishes only that the petition be presented within “a reasonable period of time.”¹³⁶

69. In the instant case, the murder of Dwayne Jones took place on July 22, 2013, and the resulting effects, in terms of the failure to properly investigate that murder and to ensure justice, have continued until the present time. Consequently, in view of the context and specific circumstances of the instant petition, as well as the fact that the criminal investigation has not yet resulted in a trial of those allegedly responsible for Dwayne Jones’s murder, the Commission should find that this petition was lodged within a reasonable period of time and that the admissibility requirements pertaining to timeliness have been met.¹³⁷

5. Absence of Parallel International Proceedings

70. The subject of the present petition is not pending in another international proceeding for settlement, and is not substantially the same as one previously studied by the Commission or by another international organization. Consequently, the requirements for admissibility established in Articles 46(1)(c) and 47(d) of the American Convention have been met.¹³⁸

V. CONCLUSION

71. The facts stated above establish that Jamaica’s systematic failure to protect LGBT persons and, in particular, Dwayne Jones, from rampant anti-LGBT discrimination and violence, violates Jamaica’s obligations under Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4(1) (Right to Life), Article 5(1) (Right to Humane Treatment), Article 7(1) (Right to Personal Liberty), Article 11 (Right to Privacy), Article 13(1) (Freedom of Thought and Expression), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection) of the American Convention.

¹³⁵ Article 46(1)(b) of the American Convention states, in pertinent part, that a petition shall be lodged “within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.” See Article 46 of the American Convention, *supra* note 58.

¹³⁶ Article 32(2) of the IACHR Rules of Procedure states that “In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission.” See Article 32 of the IACHR Rules of Procedure, *supra* note 4.

¹³⁷ See, e.g., IACHR, Report No. 5/15, Case 11,883, *Jhon Ricardo Ubate y Gloria Bogotá* (Colombia), 29 January 2015, para. 40, available at <https://www.oas.org/en/iachr/decisions/2015/COAD11883EN.pdf>.

¹³⁸ Article 46(1)(c) of the American Convention states that admission by the Commission of a petition shall be subject to the requirement that “the subject of the petition or communication is not pending in another international proceeding for settlement.” Article 47(d) of the American Convention states that the Commission shall consider inadmissible a petition if that petition “is substantially the same as one previously studied by the Commission or by another international organization.” See Article 46 and Article 47 of the American Convention, *supra* note 58. See also IACHR, Report No. 154/11, Case 12,197, *Ramón Rosendo Alarcón* (Ecuador), 2 November 2011, para. 26, available at <https://www1.umn.edu/humanrts/cases/154-11.html>.

72. The facts stated above further establish that Jamaica's specific failure to properly investigate the murder of Dwayne Jones violates Jamaica's obligations under Article 1(1) (Obligation to Respect Rights), Article 4(1) (Right to Life), Article 8(1) (Right to a Fair Trial), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection) of the American Convention.

73. For these reasons, the petitioners request that the Commission provide the following relief:

- (a) Find this petition to be admissible;
- (b) Investigate, with hearings and witnesses as necessary, the facts alleged in this petition;
- (c) Declare Jamaica to be in violation of Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4(1) (Right to Life), Article 5(1) (Right to Humane Treatment), Article 7(1) (Right to Personal Liberty), Article 8(1) (Right to a Fair Trial), Article 11 (Right to Privacy), Article 13(1) (Freedom of Thought and Expression), Article 19 (Rights of the Child), Article 24 (Equal Protection), and Article 25(1) (Right to Judicial Protection) of the American Convention; and
- (d) Recommend such remedies as the Commission considers adequate and effective for Jamaica's violations of the American Convention, including (1) the establishment of an international group of independent experts to oversee a renewed investigation of Dwayne Jones' murder; (2) the adoption of measures aimed at eradicating anti-LGBT discrimination and violence and ensuring equal protection of the law; and (3) the repeal of all laws which criminalize homosexual conduct and thereby violate the American Convention.

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Respectfully submitted,

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