## Recommendation 8

The Committee regrets that the right to freedom from discrimination fails to prohibit discrimination on grounds of sexual orientation and gender identity.

**Grade:** C

**Overview:** Jamaicans for Justice (JFJ) and Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) deplore that the Charter of Fundamental Rights and Freedoms continues to fail to protect from discrimination on the grounds of sexual orientation. Also, there are no laws covering all forms of gender discrimination.

The Committee is also concerned that the State party continues to criminalize consensual same-sex relationships.

**Grade:** C

**Overview:** The Jamaican government has not amended the Buggery Act and had failed to amend sections of the Offences Against the Person Act to ensure an end to the criminalization of consensual same sex relations.

The Committee further regrets reports of hate speeches against homosexuals by musicians and entertainers (arts. 2, 16, 26).

**Grade:** C

**Overview:** JFJ and J-FLAG regret that there is no national human rights institution to oversee the implementation, monitoring, and enforcement of human rights, which could provide the necessary powers to prosecute human rights abuses such as taking part in hate speeches.

## Recommendation 16

The Committee expresses regret at the impunity in relation to cases of extrajudicial executions by law enforcement agents. Notably, 73 civilians were reported to have been killed due to excessive use of force by law enforcement agents, during the state of emergency between May and July 2010.

**Grade:** B2

**Overview:** We regret that numerous cases of impunity in relation to cases of extrajudicial executions remain a huge problem in Jamaica. Civilians are still killed by law enforcement agents, who often remain unaccountable. According to official statistics, there were 236 killings involving police during 2011. Human rights monitors indicated that many killings by police were unreported. In most shooting incidents, police alleged that the victims were carrying firearms and opened fire on them. In many cases, however, eyewitness testimony contradicted the police accounts. In May and June of 2012, Neavardo Shawn Thomas and Kavorn Shue were killed by police. Those two victims' families reached out to JFJ. The First Quarter of 2012 saw a sharp increase in the number of police related fatalities. As the figures indicate, the month of March was the most active with 34 fatalities. As at March 31, 2012, 64 fatalities were reported. This marked a slight increase from the same period last year which was 63 – according to data received from the Jamaica Constabulary Force (JCF) Statistics and Information Management Unit. According to INDECOM, there were about 199 cases of extrajudicial killings for the year 2012.

## Recommendation 23

The Committee is particularly concerned at reports of overcrowding and deplorable sanitary conditions in the State party's prisons and places of detention.

**Grade:** C

**Overview:** JFJ regrets that the conditions of adults and juveniles in correctional facilities are deplorable. Sanitary conditions are an issue in most places and considered to be inhumane and the limited application of alternatives to imprisonment.

**Grade:** C

**Overview:** There is little action from the various governmental organisations to find alternative solutions to imprisonment especially for children.

**Grade:** C

**Overview:** Minors are kept in police lockups with adult prisons and they have daily contact with the adults.

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**Grade A: Implementation satisfactory:**
- A1: Response fully satisfactory
- A2: Response largely satisfactory

**Grade B: Implementation partially satisfactory:**
- B1: Implementation partially satisfactory: progress made, but need for additional information
- B2: Implementation partially satisfactory: progress made, but additional action required

**Grade C: Response not satisfactory**
- C: No action taken by the State Party to implement the recommendation
Paragraph 8:
While welcoming the adoption of the Charter of Fundamental Rights and Freedoms in April 2011, the Committee regrets that the right to freedom from discrimination is now expressed on the grounds of “being male or female”, failing to prohibit discrimination on grounds of sexual orientation and gender identity. The Committee is also concerned that the State party continues to retain provisions under the Offences against the Person Act which criminalize consensual same-sex relationships, thus promoting discrimination against homosexuals. The Committee further regrets reports of virulent lyrics by musicians and entertainers that incite violence against homosexuals (arts. 2, 16, 26).

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<td>The State party should amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity.</td>
<td>C</td>
<td>Jamaica has not yet taken any steps in amending its laws regarding those issues. With regard to the legislation, the Constitution does not proscribe discrimination on the basis of sexual orientation</td>
<td>On November 21, 2012, Jamaica voted against resolution A/C.3/67/L.36 condemning extrajudicial, summary or arbitrary executions which urges States “to investigate promptly and thoroughly all killings, including... all killings committed for any discriminatory reason, including sexual orientation” .</td>
<td>Between January and November 2012, J-FLAG has received 39 reports of discrimination, harassment and violence from persons on the basis of their real or perceived sexual orientation or gender identity. There were 27 allegations that were not reported to J-FLAG.</td>
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<td>The State party should also decriminalize sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant and put an end to prejudices and the social stigmatization of homosexuality.</td>
<td>C</td>
<td>The Prime Minister Simpson Miller has said that she will be making a submission to Cabinet for Parliament to have a conscience vote on the issues of sexual orientation.</td>
<td>Unfortunately there is no timeline as to when the submission would be made to Cabinet. Moreover, on November 22 2012, Minister Sandrea Falconer, said that the matter of repealing the country’s buggery law has been discussed at Cabinet but was not high on the priority list because the government wants to focus on the economy.</td>
<td>While all citizens have equal access to the law and the justice system, there are significant barriers, which prevent LGBT persons from seeking redress where their rights have been infringed. It is unclear how current efforts to reform the legal and justice systems will impact on LGBT persons.</td>
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<td>In this regard, the State party should send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation, and should ensure that individuals, who incite violence against homosexuals, are investigated, prosecuted and properly sanctioned.</td>
<td>C</td>
<td>Government officials should clearly state that they will not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation. It would not be of any cost and it would have a direct impact on the population.</td>
<td>The Ministry of Education was on the right path when in 2012, they were going to included in schools the health and family life curriculum. The later was a holistic life skills programme, covering self and interpersonal relationships; sexuality and sexual health; appropriate eating and fitness; and managing the environment. One of the activities in the book asked students to imagine they are the only heterosexuals in a world of homosexuals. Unfortunately, the strong religious lobby smeared the programme by saying it was a gay book. The government did not try to defend it and instead, took it out of the curriculum.</td>
<td>There is a need to have more training for the members of the JCF in dealing with the issue of sexual discrimination against members of the LGBT community as well as health care workers, educational institutions.</td>
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2 http://ilga.org/ilga/en/article/nPu0m8O1eL
There are currently some training organized by NGOs such as Jamaicans for Justice and J-FLAG. Notably, there are training sessions on HIV/AIDS stigmatization held with police officers with frequent follow-up communication with officers who had been trained. However, the Jamaican government needs to put in place a complete public education system.

The Diversion Policy is a step in the right direction. Since the policy is fairly new, we are still awaiting results.

Research suggests that almost two in every five Jamaicans believe the government is not doing enough to protect and promote the rights of lesbian, gay, bisexual and transgender (LGBT) persons to freedom from discrimination, violence and other forms of harassment. Currently, one in every five is tolerant of lesbian, gay, bisexual and transgender (LGBT) people. Similarly, one in every five would support an addendum to the Charter of Rights affording rights to the LGBT community. The Anti-Bullying Initiative, which is a joint multi-sectoral effort to respond to increasing levels of discrimination and violence based on prejudice in schools, is only chaired by a government agency – the Child Development Agency (CDA). The project is the effort of a number of partners including J-FLAG, which approached UNICEF in 2011 to support such a campaign.

The project has been delayed significantly because of the extended wait for the Ministry of Education (MOE) to come on board. The decision was made to move ahead with the procurement process, which has started, and newspaper ads were sent out to invite interested persons to submit bids for the research component of the project.

We do not have a written response from the MOE formally communicating its stance but UNICEF has had discussion on the issue with them at every level, including with the Minister. Their understanding, from multiple conversations especially with the CEO and other senior personnel, is that their concerns are that: 1) the project is too focused on homophobic bullying and 2) J-FLAG’s role in the project gives it an unfair advantage in pursuing its agenda and MOE participation could be viewed by the public as endorsing J-FLAG’s work. UNICEF and other partners have clarified the goals of the project and the roles of the partners including the broadening of the steering committee to reflect greater diversity in civil society membership but this has not changed MOE’s stance. However, up to mid-October, the unofficial stance of the Ministry was that they would not engage directly in the project but would support CDA as requested. A formal written communication from the Ministry on the issue; we have not yet received it.

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Paragraph 16:
The Committee regrets the continued reports of cases of extrajudicial executions by law enforcement officers. It further regrets that allegations of extrajudicial killings have, in most cases, not been effectively investigated, which perpetuates impunity. The Committee is also concerned at reports of excessive use of force by law enforcement personnel, particularly during the state of emergency between May and July 2010 where 73 civilians were killed by law enforcement personnel (art. 6).

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<td>The State party should closely monitor allegations of extrajudicial killings and ensure that all such allegations are investigated in a prompt and effective manner with a view to eradicating such crimes, bringing perpetrators to justice and hence fighting impunity and providing effective remedies to victims.</td>
<td>C</td>
<td>The latest statistics on extrajudicial shootings by the police show minimal improvement. The Minister of National Security has yet to keep his promise to citizens and hold the police accountable for their actions. There is still a failure to punish the policemen for fatal shootings. Moreover, there is a need for more transparency from the JCS and Ministry of National Security and the data needs to be more available to the public.</td>
<td>The creation of INDECOM is a step in the right direction. However, serious and severe delays at the level of the Director of Public Prosecutions, the Coroner’s Court and the Supreme Court remain unaddressed. Therefore, the issue of impunity remains.</td>
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<td>In this regard, the State party should ensure the Independent Commission of Investigations (INDECOM) is adequately resourced to be able to carry out independent and effective investigations into alleged cases of extrajudicial killings and assaults by law enforcement personnel.</td>
<td>B2</td>
<td>The Budget for 2012-2013 for INDECOM has increased to 288 000 000 Jamaican Dollars</td>
<td>Since its inception, INDECOM has been facing various legal challenges. Notably, in the case The Police Federation, Merrick Watson (Chairman of the Police Officers Association), The Special Constabulary Force Association, Delroy Davis (President of the United District Constables Association) v The Commissioner of the Independent Commission of Investigations and the Attorney General of Jamaica HCV 06165/2011. It was asked to the court whether section 20 of the Indecom Act (The Commissioner and the investigative staff of the Commission shall, in the exercise of their duty under the Act have the like powers, authorities and privileges as are given by law to a constable) viewed in the light of the relevant constitutional provisions, conferred a right to arrest and charge anyone, in particular, police officers, for the offence of murder, or for any offence at all; whether s. 20 of the Indecom Act empowered the Commissioner of Indecom or his agents to arrest and charge police officers without a ruling by the Director of Public Prosecutions. Judgment in this matter is outstanding. The disbanding of the Oversight Committee for the implementation of the JCF Strategic Review is a retrograde step, which is likely to leave an unreformed police force with insufficient oversight of the transformation process. INDECOM has had to source funding from the International Development community to ensure the completion of its investigations in a timely fashion because of the deficiencies of the Forensic sciences department of the State.</td>
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Greene, Marcel Dixon and Kenneth Daley v The Commissioner of the Independent Commission of Investigations and the Attorney General and The Director of Public Prosecutions Claim No. 2011/HCV 06344, the Claimants, police officers, were charged, following a ruling of the Director of Public Prosecutions, for failure to comply with a lawful requirement of the Commissioner contrary to section 33 of the Independent Commission of Investigations Act (it is regarding offences). The charge arose out of the failure of the Claimants to attend, produce statements and answer questions from Indecom officers (despite being given notice pursuant to section 21 of the Act to do so) in respect of the shooting death of two persons following a police operation in which the Claimants were allegedly involved.

Judgment in this matter was delivered on the 25th May, 2012 in favour of Indecom. The judges ruled, among other things: that Indecom had the power to compel the police officers to give statements; that the giving of statements to Indecom did not infringe the constitutional; that the right to silence or against self incrimination of the police officer; that the Act did not contravene the right to equal treatment under the law; that even if the rights were so infringed it was demonstrably justified in a free. An appeal has been filed in this matter.

Another matter has been brought in the Supreme Court by a telecommunications provider in Jamaica seeking declarations under the Indecom Act and other statutes as to whether Indecom has the power to compel telecommunications providers to provide subscriber information to Indecom as they would to police officers investigating a crime.

This matter has not yet been heard in the Supreme Court.
The Committee is particularly concerned at reports of overcrowding and deplorable sanitary conditions in the State party’s prisons and places of detention, below minimum standards, and at the limited application of alternatives to imprisonment. The Committee is also concerned at the failure to ensure that minors detained are held separately from adults, and accused persons from convicted persons (art. 10).

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<td>The State party should, as a matter of urgency, adopt effective measures against overcrowding in detention centres and ensure conditions of detention that respect the dignity of prisoners, in accordance with article 10 of the Covenant.</td>
<td>C</td>
<td>Unfortunately, the government of Jamaica has not taken the appropriate steps to correct the situation.</td>
<td>We need to find alternative solutions rather than imprisonment for adults and juveniles. For this, we need all the authorities working in the area of the justice to have special trainings and cooperation between different professionals (police, lawyers, psychologists, social workers). It is of great importance, given that social backgrounds significantly affect adults and juveniles’ behavior. In the end, it would cost less to the Jamaican government by finding alternative solutions.</td>
<td>Moreover, we need more facilities. The current overcrowding is a gross disrespect of the dignity of prisoners. Overcrowding and poor living conditions remain severe problems. On November 2012, the Parliaments’ Public Administration and Appropriations Committee (PAAC) have lamented the overcrowding at two of the main maximum-security prisons. Officials told this committee that the Tower Street Adult Correctional Centre has a population of 1,656, which is way above its limit of 850. It was also disclosed that the St. Catherine Adult Correctional Centre, which was built to accommodate 850 inmates, has a population of 1,201. In addition, there is overcrowding in most juvenile institutions, which the authorities use to justify putting children in adult correctional facilities.</td>
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<td>The State party should put in place a system to segregate accused persons from convicted persons and minors from other prisoners.</td>
<td>C</td>
<td>The National Plan of Action on Child Justice is unfortunately just another piece of paper with no real effects. There was a National Plan of Action on Child Justice 2006-2011, and nothing was done. The government often creates all those plans, funding the researches without any specific timeline and never implements them. Jamaica has resources but there is no political will to put them in action and look at the best interests of our children.</td>
<td>Although the law prohibits the incarceration of children in adult prisons in far too many cases, juveniles are held in adult jails and police lockups with adults. The number of Children in police lock ups is between 20 to 50 children/day. Despite the fact that the Child Care and Protection Act mentions that children should be in police detention for a maximum of 48 hours, children are spending weeks and sometimes months in police lockups according to reports from the Child Development Agency. Additionally, there is limited education for all the children in police lockups and in adult facilities. In recent meetings with the authorities we were informed that they are intending to put education courses in the police lockups instead of finding a sustainable solution for the removal of children from police lockups and adult prisons. Moreover, numerous children (around 30 to 60 per day)</td>
<td>Also, we wish to bring attention to the terrible case of Vanessa Wint. In November 2012, the 16-year-old child was found hanging in Horizon Correctional Facility, an adult male prison. The child was charged as being uncontrollable. Again, it raises many issues such as the appropriate facility that a child needs to be kept in. JFL was recently approached by a family to represent their 12-year-old girl. The later had run away and was found by the police. Without a correctional order, the girl was put into an adult prison, Fort Augusta Correctional Centre, where she would have daily contact with adults and was allegedly sexually abused by adult inmates.</td>
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What is now required is immediate provision of the necessary mechanisms as outlined under the Plan of Action for the implementation of these measures.

Recently, the Commissioner of Corrections Lieutenant Colonel Sean Prendergast said that in Fort Augusta there is ‘unavoidable contact’ between the children and adults. We deplore these actions of the government. There is currently no remand center exclusively for girls and girls on remand are housed in Adult facilities often with opportunities to interact with adult females. We deplore the fact that the government has yet to act and build any remand centers for girls and instead, imprisons them with adults in lockups or correctional facilities. This situation has been going on for years without any concrete measures being taken to correct the situation.

In August of 2012, Minister of Youth, Lisa Hanna, said that a submission to cabinet on the plans for moving the adult females and juveniles from Fort Augusta prison (which is to be closed) into a facility at South Camp was in the final stages. As of November 28 2012, the Minister said the submission is still being drafted.

It has been made clear by the Minister and the Commissioner of Corrections that the plan is to move the Juveniles and adults from Fort Augusta prison into a single facility at South Camp. A fence will separate them. Additionally, there are no plans to separate those convicted from those awaiting trial or simply in need of care and protection. We can only be saddened by the plans of the Government to continue these abusive practices.

The Child Development Agency (CDA) was created in 2004 to protect and care for all children in Jamaica. We can only be distraught by the fact that they are not protecting the children in conflict with the law. They have repeatedly denied their responsibility for these children. CDA is the organization that should look at the welfare of all children, no matter their situation. It is a gross violation of human rights that they have not stepped in to protect all children from abuse.

The State party should, in particular, take steps to ensure

| C | Children and adults are put in the same remands, adult | At all times, there are between 20 to 50 children in police lockups and they remain in these lockups for |
| that the Standard Minimum Rules for the Treatment of Prisoners are respected. | prisons and police lockups. Children in police lock ups have no education sessions and children stay in detention for weeks and months even if they are supposed to stay for only 48 hours.  
Prisoners under arrest or waiting trial and children are often detained in the same facilities as adults.  
In August 2012, the mother of a ward that was in Metcalfe Remand Centre indicated that her son has mental problems and she was unsure if he was getting proper treatment in the facility. We are deeply concerned about that fact as it appears that the Centre has no separation between disabled and none disabled wards, and that he is not getting the adequate care and supervision. This raises the disturbing issue that children with disabilities are put into correctional facilities and they are not segregated.  
Detainees are still not clearly separated according to their different stages of criminal procedure. Persons detained without charges, remandees, and convicted persons are often held together in the same facility and often shared cells. Again, we deplore the lack of actions for the government that needs to ensure that system is in place. | days, weeks and months.  
Furthermore, the State party should consider the wider application of alternative non-custodial sentences in order to alleviate the problem of overcrowding in prisons. | The State party has not yet implemented any alternative non-custodial measures. We would particularly encourage the State to have non-custodial alternatives for children especially in light of the fact that they are often incarcerated for being ‘beyond control’ or for having committed non violent crimes.  
The Office of the Children Advocate recently stated that about 2 children out of 3 do not have legal representations in front of the courts. Children in conflict with the law often just need a lawyer who is able to handle their court case. The active participation of an independent defence counsel at all stages of the criminal proceedings is essential to ensure that the children get a fair trial as well as to ensure that they are not put in police lock ups, in adult prisons, that their punishment reflects their crime and that non custodial punishments are considered. If the CCPA was respected, judges would contact the Children’s Advocate when a child is charged before a Court with any offence and does not have legal representation. Unfortunately, children are left to defend themselves against the system.  
The overcrowding of juvenile institutions would be avoidable if we would stop incarcerating children who are accused of being ‘uncontrollable’. In fact, the Child Care and Protection Act, sect. 24 states that ‘the parent or guardian of a child may bring the child before a juvenile court and where such parent or guardian proves to the court that he is unable to control the child, the court may make an order in respect of the child’. The law does not define what an uncontrollable child is. Therefore, any parent can bring their child to the authorities. We need to stop putting children in detention or correctional facilities for ‘behavioral problems’. We need instead to work with social workers and psychologists to resolve the issues. |