



University of Notre Dame
International Human Rights Clinic

CONSOLIDATED ADMISSIBILITY AND MERITS SUBMISSION TO THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

IN THE CASE OF

DWAYNE JONES (VICTIM) V. JAMAICA (RESPONDENT)

CASE No. 15.080

PETITION No. P-265-16

May 1, 2023

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I. INTRODUCTION

1. The University of Notre Dame International Human Rights Clinic¹ respectfully submits this consolidated admissibility and merits brief in the case of Dwayne Jones (Victim) v. Jamaica (Respondent)[Case No. 15.080, Petition No. P-265-16].
2. On July 22, 2013, Dwayne Jones, a 16-year-old transgender minor,² was brutally attacked and killed by a mob near Montego Bay, Jamaica.³ 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.⁴ Nearly ten years after this horrific murder, no arrests have been made in the case. By refusing to curtail rampant and systematic anti-LGBTI discrimination and violence, and by failing to properly investigate and prosecute Dwayne Jones' homicide, 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").
3. As the Inter-American Commission on Human Rights (IACHR) held recently in *Gareth Henry and Simone Carline Edwards v. Jamaica* and in *T.B. and S.H. v. Jamaica*, by criminalizing homosexual conduct, Jamaica is responsible for violence perpetrated against LGBTI persons.⁵ Both the IACHR and the Inter-American Court of Human Rights have found "that there is a link between sodomy laws and human rights abuses against LGBTI persons inasmuch as said laws condone discrimination, stigmatization and violence by providing a social sanction for abuse and contributes to the occurrence of homophobic and

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² At the time of their 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>.

³ *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 <https://www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-chap5-Jamaica.pdf>.

⁴ *In Jamaica, transgender teen killed by mob*, Associated Press, Aug. 11, 2013, available at <http://bigstory.ap.org/article/jamaica-transgender-teen-murdered-mob>.

⁵ IACHR, Report No. 400/20, Case No. 13,637, *Gareth Henry and Simone Carline Edwards* (Jamaica), 31 December 2020, para 88, available at https://www.oas.org/en/iachr/decisions/2020/JM_13.637_EN.PDF; IACHR Report No. 401/20, Case No. 13,095, *T.B. and S.H.* (Jamaica), 31 December 2020, para. 99, available at https://www.oas.org/en/iachr/decisions/2020/JM_13.095_EN.PDF.

transphobic crimes as well as other abuses.”⁶ Criminalization of same-sex intimacy makes LGBTI persons “more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity.”⁷ Jamaica refuses to amend its shameful, discriminatory and violence-inciting anti-LGBTI laws even after the Inter-American Court of Human Rights ruled explicitly in *Atala Riffo And Daughters v. Chile* that the sexual orientation of persons is a category protected by the American Convention:

Therefore, any regulation, act, or practice considered discriminatory based on a person’s sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.⁸

4. Petitioner respectfully requests that the Commission find this petition to be admissible; investigate, with hearings and witnesses as necessary, the facts alleged in this petition; and declare Jamaica to be in violation of the American Convention.
5. Under Article 38 of the IACHR Rules of Procedure, “[t]he facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the period set by the Commission under the provisions of Article 37 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.”

⁶ IACHR, Report No. 400/20, Case No. 13,637, *Gareth Henry and Simone Carline Edwards* (Jamaica), 31 December 2020, *supra* note 5, para 86; IACHR Report No. 401/20, Case No. 13,095, *T.B. and S.H.* (Jamaica), 31 December 2020, *supra* note 5, para. 97.

⁷ IACHR, Report No. 400/20, Case No. 13,637, *Gareth Henry and Simone Carline Edwards* (Jamaica), 31 December 2020, *supra* note 5, para 66; IACHR Report No. 401/20, Case No. 13,095, *T.B. and S.H.* (Jamaica), 31 December 2020, *supra* note 5, para. 77. *See also Report of the United Nations High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, 17 November 2011, paras 41, 42, available at https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf; *Report of the Office of the United Nations High Commissioner for Human Rights, Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015, para.43, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/088/42/PDF/G1508842.pdf?OpenElement>.

⁸ *Atala Riffo And Daughters v. Chile*, Judgment of February 24, 2012, Inter-Am. Ct.H.R., (Ser. C) No. 239 (2012), para 91, available at https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf. *See also Duque v. Colombia*, Merits, Reparations and Costs, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct. H.R., (Ser. C) No. 322 (2016), para 104, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_310_ing.pdf.

II. STATEMENT OF FACTS

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

6. The IACHR, as well as other international agencies and nongovernmental organizations, have repeatedly expressed their concern over the situation of LGBTI persons in Jamaica and highlighted that the existence of laws that criminalize consensual same-sex relations generates a culture of hostility, discrimination and violence against LGBTI persons.

1. IACHR Reports

7. In its 2012 report on the situation of human rights in Jamaica, the IACHR reported that:

Discrimination based on sexual orientation, gender identity and gender expression is widespread throughout Jamaica, and that discrimination against those in the lesbian, gay, bisexual, trans and intersex (LGBTI) communities is entrenched in Jamaican State Institutions. Those who are not heterosexual or cisgender face political and legal stigmatization, police violence, and inability to access the justice system, as well as intimidation, violence and pressure in their homes and communities.

The law 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.⁹

8. Jamaica's human rights record was further assessed in the IACHR's 2014 Annual Report, released on May 7, 2015.¹⁰ In that report, the Commission expressed grave concern regarding "the continued acts of violence and discrimination toward vulnerable groups, including LGBTI persons."¹¹
9. The Commission noted that "acts of violence and discrimination against LGBTI persons continue to be widespread and, in turn, pose a serious deterrent to victims, who then choose not to report these crimes."¹² In fact, LGBTI 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

⁹ IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/v/II.144, Doc. 12, 10 August 2012, paras. 264 and 271, available at <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>.

¹⁰ *IACHR 2014 Annual Report*, *supra* note 3, at Chapter V.

¹¹ *Id.* at para. 5.

¹² *Id.* at para. 165.

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.”¹³

10. 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.¹⁴ The Commission also cited the killing of two LGBTI persons, which took place on June 13, 2012, whose bodies “were chopped or mutilated, and were found near several rocks with bloodstains.”¹⁵ 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.”¹⁶
11. The Commission recognized that many attacks against LGBTI 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.¹⁷

12. 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.”¹⁸

¹³ *Id.*

¹⁴ *Id.* at para. 171.

¹⁵ *Id.* at para. 170.

¹⁶ *Id.* at para. 170.

¹⁷ *Id.* at para. 173.

¹⁸ *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>.

13. Likewise, in its 2015 Report on Violence against LGBTI Persons, the IACHR expressed its concern on the impact of legislation that criminalizes same-sex consensual intimacy in Jamaica. The Commission noted that:

These laws reinforce already existing societal prejudices and severely increase the negative effects of such prejudices on the lives of LGBTI persons. The criminalization of sexual intercourse between men also has a symbolic effect since in the eyes of the legal system where such criminalization is in force, all gay men are criminals. The existence of “buggery” laws is used as a mechanism for social control and domination that enables states to legitimize and contribute to the stigma of LGBTI persons as immoral individuals. Moreover, such laws have been used to justify the arbitrary arrests, detention and even torture of LGBTI people.¹⁹

14. The IACHR further recognized that “trans persons, and gender non-conforming persons experience a disproportionate impact, given their visibility.”²⁰
15. 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 LGBTI persons.²¹ The IACHR has noted that the Offences 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.”²²
16. The IACHR concludes that “criminalization legislation has a negative impact on the defense for human rights, restricts access to justice and fuels intolerance.”²³ 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 IACHR²⁴ and other international human rights monitoring bodies.²⁵

¹⁹ IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, Oas/Ser.L/V/II.rev.1, Doc. 36, 12 November 2015, paras. 56, 74,75, available at <http://www.oas.org/en/iachr/reports/pdfs/violenceigbtipersons.pdf>. See also *Leave no LGBT person behind*, Statement by human rights experts on the International Day Against Homophobia, Transphobia and Biphobia, May 16, 2018, available at <https://www.ohchr.org/en/statements/2018/05/leave-no-lgbt-person-behind>.

²⁰ IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, supra note 19, para 61; IACHR, *Report on the Situation of Human Rights in Jamaica*, supra note 9, para. 287.

²¹ IACHR, *Annual Report of the Inter-American Commission on Human Rights 2014*, supra note 3, para. 156.

²² See *IACHR 2012 Jamaica Report*, supra note 9, at para. 271.

²³ See *IACHR 2014 Annual Report*, supra note 3, at para. 157.

²⁴ See *IACHR 2012 Jamaica Report*, supra note 9, at para. 305(a).

²⁵ See *IACHR 2014 Annual Report*, supra note 3, at para. 155.

2. United Nations Reports

17. United Nations Special Procedures mandate holders have also emphasized the link between criminalization of same-sex relations and homophobic hate crimes, police abuse, torture, and community violence.
18. The United Nations Special Rapporteur on torture has found that “[a] clear link exists between the criminalization of lesbian, gay, bisexual and transgender persons and homophobic and transphobic hate crimes, police abuse, community and family violence and stigmatization (...) Such laws foster a climate in which violence against lesbian, gay, bisexual and transgender persons by both State and non-State actors is condoned and met with impunity.”²⁶
19. The United Nations Special Rapporteur on health has noted that “sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals.”²⁷
20. The United Nations Special Rapporteur on extrajudicial executions has stated that criminalization increases social stigmatization and makes people “more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity.”²⁸

3. Reports from Non-governmental Organizations

21. 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 reviews of Jamaica’s human rights record, including its abysmal failure to protect LGBTI persons and investigate crimes against them.
22. On October 21, 2014, Human Rights Watch released a report entitled *Not Safe at Home: Violence and Discrimination Against LGBT People in Jamaica*.²⁹ The report found that LGBTI 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.”³⁰

²⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, para. 15, available at https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/31/57.

²⁷ IACHR, Report No. 400/20, Case No. 13,637, *Gareth Henry and Simone Carline Edwards* (Jamaica), 31 December 2020, *supra* note 5, para 66; IACHR Report No. 401/20, Case No. 13,095, *T.B. and S.H.* (Jamaica), 31 December 2020, *supra* note 5, para. 77.

²⁸ IACHR, Report No. 400/20, Case No. 13,637, *Gareth Henry and Simone Carline Edwards* (Jamaica), 31 December 2020, *supra* note 5, para 66; IACHR Report No. 401/20, Case No. 13,095, *T.B. and S.H.* (Jamaica), 31 December 2020, *supra* note 5, para. 77.

²⁹ *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>.

³⁰ *Id.* at 2.

23. In researching its report, Human Rights Watch interviewed 71 LGBTI 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.³¹ 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.”³² Of those interviewed, 10 LGBTI 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.³³
24. 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 LGBTI people. . . . Serious rights abuses based on sexual orientation and gender identity continue, and justice for these crimes remains elusive.”³⁴
25. 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 LGBTI people in Jamaica.”³⁵
26. 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.”³⁶
27. 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.”³⁷
28. 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*.³⁸ The report found that “Jamaica is party to various international treaties that have been interpreted to

³¹ *Id.* at 2.

³² *Id.* at 21.

³³ *Id.* at 24.

³⁴ *Id.* at 4.

³⁵ *Id.* at 69.

³⁶ *Id.* at 29.

³⁷ *Id.* at 70.

³⁸ *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 <https://humanrightsfirst.org/wp-content/uploads/2022/11/HRF-Jamaica-Report-final.pdf>.

guarantee protections for LGBTI people. Nonetheless, LGBTI Jamaicans often face serious violence and discrimination because of their sexual orientation or gender identity.”³⁹ 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.”⁴⁰

29. 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.”⁴¹
30. 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.”⁴²
31. Amnesty International also addressed Jamaica’s human rights record in its 2014/15 annual report. That review found that “LGBTI organizations continued to report attacks, harassment and threats against individuals based on their real or perceived sexual orientation, which were not fully and promptly investigated.”⁴³
32. In *Freedom in the World 2015*, the annual report prepared by Freedom House, Jamaica’s failure to protect LGBTI 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.”⁴⁴
33. 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*.⁴⁵ J-FLAG noted that “[t]he socio-cultural and legal environment has contributed to the prevalence of discrimination and acts of violence against LGBTI Jamaicans over the years. These incidents include, *inter alia*, murder, forced evictions, temporary and permanent displacement, beatings, and mob attacks.”⁴⁶
34. 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

³⁹ *Id.* at 1.

⁴⁰ *Id.* at 1.

⁴¹ *Id.* at 7.

⁴² *Id.* at 9.

⁴³ *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/>.

⁴⁴ *Freedom in the World 2015*, Freedom House (2015) at [hereinafter *Freedom in the World 2015*], available at <https://www.refworld.org/docid/55cb45dde.html>.

⁴⁵ *Homophobia and Violence in Jamaica*, Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG)(December 2013) [hereinafter *Violence in Jamaica*], available at <https://www.equalityjamaica.org/wp-content/uploads/2021/08/Homophobia-Violence-in-Jamaica-JFLAG-2013.pdf>.

⁴⁶ *Id.* at 1.

homes and communities. Other incidents included extortion and threats as well as sexual violence, particularly against lesbians and bisexual women.”⁴⁷

35. 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.”⁴⁸
36. 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,”⁴⁹ 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.”⁵⁰
37. The discriminatory laws referenced in the J-FLAG report include Sections 76, 77 and 79 of Jamaica’s Offences Against the Person Act⁵¹ which criminalize same sex intimacy between consenting adults.

B. Jamaica’s Specific Failure to Properly Investigate the Murder of LGBTI Teenager Dwayne Jones

38. In the early morning hours of July 22, 2013, Dwayne Jones was brutally attacked and killed near Montego Bay, Jamaica.⁵² News outlets reported that the teenager was at a dance party when he was set upon by a mob,⁵³ and that their body was found by the roadway “with multiple stab wounds and a gunshot wound.”⁵⁴
39. 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.⁵⁵ Police were immediately summoned⁵⁶ and reportedly collected 14

⁴⁷ *Id.* at 2.

⁴⁸ *Id.* at 1.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 4.

⁵¹ “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 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 3, at para. 154.

⁵² *Id.* at para. 171.

⁵³ *J-FLAG condemns mob killing of alleged MoBay cross-dresser*, Jamaica Gleaner, July 23, 2013, available at <http://jamaica-gleaner.com/power/46697>.

⁵⁴ *Police probe St James teen murder*, Jamaica Gleaner, July 23, 2013, available at <http://jamaica-gleaner.com/power/46680>.

⁵⁵ *In Jamaica, transgender teen killed by mob*, Associated Press, Aug. 11, 2013, available at <https://apnews.com/article/ba0683d026ec41e58a1f1589a7de7f8a>.

⁵⁶ *Police probe St James teen murder*, Jamaica Gleaner, July 23, 2013, available at <http://jamaica-gleaner.com/power/46680>.

statements from witnesses.⁵⁷ 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 able to make an arrest in the matter very soon."⁵⁸ However, nearly ten years later, no arrests have been made in the case 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.⁵⁹

40. Two eyewitnesses, identified as Dwayne Jones' housemates, who were present during the attack, have spoken with news outlets about the murder.⁶⁰ 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-LGBTI slurs and epithets.⁶¹ 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."⁶²
41. 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."⁶³
42. 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.

⁵⁷ *Police: Arrest soon in cross-dresser's death*, Jamaica Observer, Aug. 14, 2013, available at <https://www.jamaicaobserver.com/news/police-arrest-soon-in-cross-dressers-death/>.

⁵⁸ *Id.*

⁵⁹ *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 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 3, at para. 176.

⁶⁰ *In Jamaica, transgender teen killed by mob*, Associated Press, Aug. 11, 2013, available at <https://apnews.com/article/ba0683d026ec41e58a1f1589a7de7f8a>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Boom Bye Bye: Murder Of Cross-Dresser Lifts Lid On Jamaica's Violent Homophobia*, Int'l. Bus. Times, Aug. 2, 2013, available at <https://www.ibtimes.com/boom-bye-bye-murder-cross-dresser-lifts-lid-jamaicas-violent-homophobia-1370173>.

III. 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

43. The human rights and fundamental freedoms set forth in the American Declaration of the Rights and Duties of Man⁶⁴ and the American Convention on Human Rights⁶⁵ 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.”
44. Article 1(1) of the American Convention provides that State Parties⁶⁶ 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.”
45. All individuals, including lesbian, gay, bisexual, transgender and intersex (LGBTI) people, are afforded the same protections provided for by those documents, including the rights to life, liberty and personal security.

⁶⁴ 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), available at

https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1027&context=facsch_lawrev. 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).

⁶⁵ 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-](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm)

[32_American_Convention_on_Human_Rights.htm](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.”

⁶⁶ 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.

46. 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.”⁶⁷
47. 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.”⁶⁸
48. The Inter-American Court specifically held, in the *Case of Atala Riffo and Daughters v. Chile*,⁶⁹ that sexual orientation and gender identity are protected categories under the American Convention:

Bearing in mind the general obligations to respect and guarantee the rights established in Article 1(1) of the American Convention, the interpretation criteria set forth in Article 29 of that Convention, the provisions of the Vienna Convention on the Law of Treaties, and the standards established by the European Court and the mechanisms of the United Nations (supra paras. 83-90), the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory based on a person’s sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.⁷⁰

49. 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.”⁷¹

⁶⁷ 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.

⁶⁸ 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.

⁶⁹ 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>.

⁷⁰ *Id.*

⁷¹ See IACHR, *Sexual Orientation, Gender Identity and Gender Expression: Some Terminology and Relevant Standards*, CP/CAAP-INF. 166/12, 23 April 2012, para 26, available at http://www.oas.org/dil/CP-CAJP-INF_166-12_eng.pdf at para. 26.

50. 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.”⁷² Hence, any difference in treatment based on sexual orientation and gender identity is suspect and presumed to be incompatible with the American Convention.
51. 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 freedoms, taking into account the social and cultural attributes that have been associated with those categories.”⁷³
52. 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.⁷⁴
53. 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 LGBTI 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 LGBTI persons within OAS member states.⁷⁵
54. 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.”⁷⁶

⁷² *Id.* at para. 29.

⁷³ *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>.

⁷⁴ See *IACHR 2012 Jamaica Report*, *supra* note 9, at para. 305(a).

⁷⁵ 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>.

⁷⁶ *Id.* at para. 3.

55. Resolutions AG/RES. 2435 (XXXVIII-O/08),⁷⁷ AG/RES. 2504 (XXXIX-O/09),⁷⁸ AG/RES. 2600 (XL-O/10),⁷⁹ AG/RES. 2653 (XLI-O/11),⁸⁰ AG/RES. 2721 (XLII-O/12),⁸¹ and AG/RES. 2807 (XLIII-O/13)⁸² 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 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 LGBTI Persons and, in Particular, Dwayne Jones, from Rampant Anti-LGBTI 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

56. Under Article 1(1) (Obligation to Respect Rights) of the American Convention,⁸³ 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

⁷⁷ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES/2435 (XXXVIII-O/08) (June 3, 2008), available at <https://www.refworld.org/pdfid/4a54bc090.pdf>.

⁷⁸ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2504 (XXXIX-O/09) (June 4, 2009), available at <https://www.refworld.org/pdfid/4ad5ae402.pdf>.

⁷⁹ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2600 (XL-O/10) (June 8, 2010), available at https://www.oas.org/dil/esp/ag-res_2600_xl-o-10_esp.pdf.

⁸⁰ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2653 (XLI-O/11) (June 7, 2011), available at https://www.oas.org/dil/esp/ag-res_2653_xli-o-11_esp.pdf.

⁸¹ Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2721 (XLII-O/12) (June 4, 2012), available at <https://www.oas.org/en/iachr/lgtbi/docs/GA%20Res%20%202721.pdf>.

⁸² Organization of American States [OAS], *Human Rights, Sexual Orientation, and Gender Identity and Expression*, AG/RES. 2807 (XLIII-O/13) (June 6, 2013), available at https://www.oas.org/en/iachr/lgtbi/docs/AG-RES_2807_XLIII-O-13.pdf.

⁸³ See *American Convention*, *supra* note 65. 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.

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.”⁸⁴

57. Article 2 (Domestic Legal Effects) of the American Convention⁸⁵ 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. Furthermore, adoption of these measures becomes necessary when there is evidence of practices that are violations of the American Convention in any way.”⁸⁶

58. In *Jessica Lenahan (Gonzales) v. United States*,⁸⁷ 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.⁸⁸

59. 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.”⁸⁹ 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.”⁹⁰ In situations

⁸⁴ 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.

⁸⁵ See *American Convention*, *supra* note 65. 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.

⁸⁶ 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>.

⁸⁷ IACHR, Report No. 80/11, Case 12,626, *Jessica Lenahan (Gonzales) (United States)*, 21 July 2011, para. 109, available at <https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2014-HRC-IACHR-JessicaLenahan-Report.pdf>.

⁸⁸ *Id.*

⁸⁹ *IACHR Report on Citizen Security*, *supra* note 86, at para. 41.

⁹⁰ *Id.* at para. 43.

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.”⁹¹

2. State Responsibility for Acts Committed by Private Individuals

60. 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.”⁹² In the case of persons in especially vulnerable situations, “State responsibility also arises because of the lack of measures to prevent harm.”⁹³

61. Under the American Convention, States Parties may be held responsible for human rights violations committed by private individuals and third parties.⁹⁴ As the Inter-American Court has held:

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.⁹⁵

62. 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.⁹⁶ This obligation extends to the positive duty of the authorities “to adopt preventive operative

⁹¹ *Id.* at para. 44.

⁹² *Id.* at para. 38.

⁹³ *Id.*

⁹⁴ 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), available at <https://www.law.cornell.edu/supremecourt/text/489/189> (holding that the Due Process Clause in the United States Constitution does not impose an affirmative obligation on the state to “guarantee ... 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.

⁹⁵ 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.

⁹⁶ *IACHR Report on Citizen Security*, *supra* note 86, at para. 43.

measures to protect an individual or group of individuals, whose lives are at risk of criminal offenses by other individuals.”⁹⁷

3. State Responsibility to Punish Hate Speech

63. Hate speech, or speech designed to intimidate, oppress or incite hatred or violence against a person or group based on their race, religion, nationality, gender, sexual orientation, disability or other group characteristic is not protected by the American Convention. To the contrary, Article 13, paragraph 5 of the Convention explicitly requires States Parties to punish such speech:

Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered offenses punishable by law.⁹⁸

64. Despite this affirmative obligation under the Convention, Jamaica refuses to punish, or even condemn, virulent hate speech found in Jamaican music which glorifies, and encourages, homicidal violence against LGBTI persons.

65. Jamaican dancehall musicians routinely perform songs that call for brutal violence against men and women who do not conform to stereotypical gender roles, and celebrate their killing. In the song *Bun Out Di Chi Chi*, deejay Clifton George Bailey, known professionally as Capleton, calls for LGBTI persons to be burned to death.⁹⁹

66. In the song *Boom Bye Bye*, Jamaican dancehall musician Mark Anthony Myrie, known professionally as Buju Banton, calls for LGBTI persons to be executed by gunfire: “Boom bye bye / inna batty bwoy head / Rude bwoy no promote no nasty man / dem haffi dead.” (“Boom [the sound of a gunshot], bye-bye, in a f-----’s head / the tough young guys don’t accept f---; they have to die.”)¹⁰⁰

67. In the song *Wicked in Bed*, Jamaican deejay Rexton Rawlson Fernando Gordon, known professionally as Shabba Ranks, calls for the killing of all LGBTI persons: “Inna fi mi bed mi don’t waan Alfred, Don’t waan Tony, mi don’t waan Ted . . . all maamaman fi dead BAM BAM!!! Lick a shot inna a maamaman head.” (“In my bed I do not want Alfred, do not want Tony, I do not want Ted . . . all homosexuals must die. Put a gunshot in the head of a homosexual.”)¹⁰¹

⁹⁷ *Id.* at para. 44.

⁹⁸ See *American Convention*, Article 13(5) (Freedom of Thought an Expression), *supra* note 65.

⁹⁹ Winsome Marcia Chunnu, *Battyboy must die! Dancehall, class and religion in Jamaican homophobia*, *European Journal of Cultural Studies*, Vol. 24(1) at 131 (2021), available at <https://journals.sagepub.com/doi/pdf/10.1177/1367549420951578>. Capleton’s 1990 song *Bumbo Red* calls for gay and lesbian people to be shot in the head: “Lick a shot inna a battyman head / Lick a shot inna a lesbian head / All sodomite dem fi dead / all lesbian dem fi dead.

¹⁰⁰ *Id.* at 130.

¹⁰¹ *Id.*

68. Rather than condemning anti-LGBTI hate speech, the Jamaican Labour Party's theme song during the 2001 elections was *Chi Chi Man*, by dancehall group TOK, about killing and burning gay men: "From dem a par inna chi chi man car / Blaze di fire mek we bun dem! From dem a drink inna chi chi man bar / Blaze di fire mek we dun dem!" ("Those who gather in a f--'s car / Blaze the fire, let's burn them! Those who drink in a f-- bar / Blaze the fire, let's kill them!")¹⁰²
69. Similarly, in 2002, the People's National Party took on the slogan "Log On to Progress," a reference to the dancehall song *Log On* by Elephant Man which features violent anti-gay lyrics: "Log on, and step pon chi chi man / Log on from yu know seh yu nuh ickie man./ Log on and step pon chi chi man /Dance wi a dance and a bun out a freaky man." ("Log on, and stomp on a f--/ Log on, because you know you're not a f--/Log on, and stomp on a f--/We dance and dance and burn up a f--".)¹⁰³
70. By refusing to punish, or even condemn, those who produce this music, Jamaica is complicit in, and responsible for, the systematic violence experienced by LGBTI persons, including Dwayne Jones, resulting from such hate speech.

4. Jamaica's Breach of the Duty to Protect LGBTI Persons and, in particular, Dwayne Jones, From Rampant Anti-LGBTI Discrimination and Violence

71. Jamaica's systematic failure to protect LGBTI persons and, in particular, Dwayne Jones, from rampant anti-LGBTI discrimination and violence, violates Jamaica's obligations under Article 1(1) (Obligation to Respect Rights),¹⁰⁴ Article 2 (Domestic Legal Effects),¹⁰⁵ Article 4(1) (Right to Life),¹⁰⁶ Article 5(1) (Right to Humane Treatment),¹⁰⁷ Article 7(1) (Right to Personal Liberty),¹⁰⁸ Article 11 (Right to Privacy),¹⁰⁹ Article 13(1) (Freedom of

¹⁰² Leah Nelson, *Jamaica's Anti-Gay 'Murder Music' Carries Violent Message*, Southern Poverty Law Center (Feb. 27, 2011), available at <https://www.splcenter.org/fighting-hate/intelligence-report/2015/jamaicas-anti-gay-murder-music-carries-violent-message>.

¹⁰³ *Id.*

¹⁰⁴ See *American Convention*, Article 1(1) (Obligation to Respect Rights), *supra* note 65.

¹⁰⁵ See *American Convention*, Article 2 (Domestic Legal Effects), *supra* note 65.

¹⁰⁶ See *American Convention*, Article 4(1) (Right to Life), *supra* note 65.

¹⁰⁷ See *American Convention*, *supra* note 65. 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."

¹⁰⁸ See *American Convention*, *supra* note 65. Article 7(1) (Right to Personal Liberty) of the American Convention provides that "Every person has the right to personal liberty and security."

¹⁰⁹ See *American Convention*, *supra* note 65. 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.

Thought and Expression),¹¹⁰ Article 19 (Rights of the Child),¹¹¹ Article 24 (Equal Protection),¹¹² and Article 25(1) (Right to Judicial Protection)¹¹³ of the American Convention:

(a) Jamaica has failed to act with due diligence to eliminate anti-LGBTI 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 LGBTI 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-LGBTI 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-LGBTI discrimination and violence, thereby violating Jamaica's obligations, and Dwayne Jones' rights, under the American Convention, including Article 1(1) (Obligation to Respect

¹¹⁰ See *American Convention*, *supra* note 65. 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.

¹¹¹ See *American Convention*, *supra* note 65. 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."

¹¹² See *American Convention*, *supra* note 65. 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."

¹¹³ See *American Convention*, Article 25(1) (Right to Judicial Protection) *supra* note 65.

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);

(e) Jamaica has failed to act with due diligence to prosecute anti-LGBTI 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); and

(f) Jamaica has failed to act with due diligence to punish anti-LGBTI 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. States Parties' Obligation to Investigate Violations of Fundamental Rights

72. 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)¹¹⁴ of the American Convention, together with the due process and judicial

¹¹⁴ See *American Convention*, Article 1(1) (Obligation to Respect Rights), *supra* note 65.

protection guarantees set forth in Article 8(1) (Right to a Fair Trial)¹¹⁵ and Article 25(1) (Right to Judicial Protection).¹¹⁶

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.¹¹⁷

73. 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.”¹¹⁸

74. 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.¹¹⁹

¹¹⁵ See *American Convention*, *supra* note 65. 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.

¹¹⁶ See *American Convention*, *supra* note 65. 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 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.

¹¹⁷ *IACHR Report on Citizen Security*, *supra* note 86, at para. 45.

¹¹⁸ 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.

¹¹⁹ 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

75. The duty to investigate human rights violations is a positive obligation of the States, “which continues in effect until it is completely fulfilled.”¹²⁰ 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.”¹²¹
76. 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 individuals or groups.”¹²² 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.”¹²³

77. 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.¹²⁴

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

78. 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

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.

¹²⁰ 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>.

¹²¹ *Id.* at para. 34.

¹²² *Id.*

¹²³ 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.

¹²⁴ See IACHR, *Special Study on Murder of Journalists*, March 8, 2008, supra note 120, at para. 72.

respect for this right it is impossible to effectively guarantee or have full enjoyment of any other human rights or freedoms.”¹²⁵

79. Because of the fundamental role assigned to the right to life,¹²⁶ “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.”¹²⁷

80. 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 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.¹²⁸

81. 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.”¹²⁹

82. 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.”¹³⁰ 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.”¹³¹

¹²⁵ 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>.

¹²⁶ See *American Convention*, *supra* note 65. 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.

¹²⁷ See IACHR, *Special Study on Murder of Journalists*, March 8, 2008, *supra* note 120, at para. 50.

¹²⁸ 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.

¹²⁹ See IACHR, *Special Study on Murder of Journalists*, March 8, 2008, *supra* note 120, at para. 51.

¹³⁰ 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.

¹³¹ See IACHR, *Special Study on Murder of Journalists*, March 8, 2008, *supra* note 120, at para. 57.

3. Jamaica Constabulary Force's Pattern and Practice of Engaging in Discrimination and Violence Against LGBTI Persons and Failing to Investigate Crimes Against Them

83. As noted above, the IACHR has found that LGBTI persons in Jamaica face systematic police abuse and violence, and that police are far less likely to investigate crimes against them.¹³² In fact, LGBTI 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.

84. According to Amnesty International, LGBTI persons in Jamaica “are routinely victims of ill-treatment and harassment by the police, and occasionally of torture. Reports also indicate that the police have failed to protect gay people from violence in police detention or to assist victims or witnesses of homophobic crimes from violence in police detention or to assist victims or witnesses of homophobic crimes.”¹³³

85. A report submitted to the 103rd session of the U.N. Human Rights Committee by several prominent non-governmental organizations found that

Jamaican politicians publically engage in homophobic speech, which fosters an atmosphere of intolerance towards LGBT people within the Jamaican population. Violence and discrimination against LGBT individuals is common and widespread. Often the police, the Jamaican Constabulary Force (“JCF”), are complicit in these crimes. Even when the police are not involved, the government is in violation of its obligations under the International Covenant on Civil and Political Rights (ICCPR) for failing to protect, investigate, and prosecute perpetrators of violence and discrimination against individuals on the basis of their sexual orientation or gender identity.¹³⁴

86. A 2014 report by Human Rights Watch found that the Jamaican police made arrests in only 4 of the 56 cases of anti-LGBTI violence that the report documented.¹³⁵ The report further found that “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

¹³² IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/v/II.144, Doc. 12, 10 August 2012, supra note 9, para 264 and 271.

¹³³ Amnesty International, *Jamaica: Killings and violence by Police: How many more victims? (Summary)* (April 2001) at 16, available at <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr380072001en.pdf>.

¹³⁴ *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report* (October 2011), at 3, available at https://www2.ohchr.org/english/bodies/hrc/docs/ngos/lgbt_jamaica103.pdf.

¹³⁵ *Not Safe at Home: Violence and Discrimination Against LGBT People in Jamaica*, Human Rights Watch (Oct. 21, 2014) [hereinafter *Not Safe at Home*], at 2, available at <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica>.

life and freedom from cruel, inhuman, and degrading treatment of LGBT people in Jamaica.”¹³⁶

87. The report also 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.”¹³⁷
88. A 2015 report by Human Rights First found 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.”¹³⁸
89. A 2015 report by Freedom House noted that “[h]arassment of and violence against LGBT (lesbian, gay, bisexual, and transgender) people remains a major concern and is frequently ignored by the police.”¹³⁹
90. The IACHR has held States Parties responsible when law enforcement officers engage in a “pattern or practice” of abusive behavior.¹⁴⁰ The IACHR has also ruled that States Parties can be held responsible for a lack of due diligence in investigating and punishing crimes:

[W]ere proof to be established of the lack of due diligence by police officers and legal officials in this criminal investigation, of the excessive delay in criminal proceedings without events having been established and without those responsible for them having been tried to date, of the alleged pattern of lynching that have prompted no effective legal response ... these acts would tend to establish possible violations of the rights recognized in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in accordance with Article 1.1 of said Convention.¹⁴¹

91. States Parties can also be held responsible for violating Article 24 (Equal Protection) of the American Convention if a pattern of impunity toward violent acts, especially against vulnerable groups, can be shown.¹⁴²

¹³⁶ *Id.* at 69.

¹³⁷ *Id.* at 29.

¹³⁸ *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*], at 9, available at <https://humanrightsfirst.org/wp-content/uploads/2022/11/HRF-Jamaica-Report-final.pdf>.

¹³⁹ *Freedom in the World 2015*, Freedom House (2015) at [hereinafter *Freedom in the World 2015*], available at <https://www.refworld.org/docid/55cb45dde.html>.

¹⁴⁰ IACHR, Report No. 29/20, Case No. 12,865, *Djamel Ameziane* (United States), 22 April 2020, paras. 51,190, available at <https://www.oas.org/en/iachr/decisions/2020/uspu12865en.pdf>.

¹⁴¹ IACHR, Report No. 46/17, Petition 69-08. Admissibility. *Javier Charque Choque and family* (Bolivia) 25 May 2017, para. 12, available at <https://www.oas.org/en/iachr/decisions/2017/BOAD69-08EN.pdf>.

¹⁴² IACHR, Report No. 92/06, Petition 95-04. Admissibility. *María Isabel Véliz Franco* (Guatemala) 21 October 2006, para. 52, available at <http://www.cidh.oas.org/annualrep/2006eng/GUATEMALA.95.04eng.htm>.

[W]hen the State apparatus leaves human rights violations unpunished and the victim's full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duties under international human rights law. The same principle applies when a State allows private persons to act freely and with impunity to the detriment of the rights recognized in the governing instruments of the inter-American system.¹⁴³

92. The failure to conduct a “prompt, thorough, exhaustive and impartial investigation”¹⁴⁴ of human rights violations, especially when it involves the right to life, also violates the right to judicial protection found in Article XVIII of the American Declaration (as well as Article 25(1) (Right to Judicial Protection) of the American Convention).

4. Jamaica's Breach of the Duty to Properly Investigate the Murder of Dwayne Jones

93. On November 20, 2018, petitioner filed a request, pursuant to Jamaica's Access to Information Act (2002), for all documents held by the Jamaica Constabulary Force relating to the murder of Dwayne Jones, including investigative files and witness statements. That request was sent by courier to Dr. Horace Chang, Jamaica's Minister of Security. To date, Minister Chang has not responded to petitioner's lawful request for information.
94. Under Article 38 of the IACHR Rules of Procedure, “[t]he facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the period set by the Commission under the provisions of Article 37 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.”
95. Petitioner has found no evidence that Jamaica conducted a “prompt, thorough, exhaustive and impartial investigation” of Dwayne Jones' murder as required by Article 25(1) (Right to Judicial Protection) of the American Convention.
96. The IACHR has previously held that, in cases of potentially unlawful death, States Parties should apply the United Nations *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions*, and, in particular, the *Model Protocol for an Investigation of Extra-Legal, Arbitrary, and Summary Executions* (“Minnesota Protocol”).¹⁴⁵ According to the standards established in that protocol,

the procedure for collecting evidence at the scene of the crime should follow certain criteria, including the following: (a) the area

¹⁴³ IACHR Report No. 80/11, Case No. 12,626, *Jessica Lenahan (Gonzales)* (United States) 21 July 2011, para. 173, available at <https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2014-HRC-IACHR-JessicaLenahan-Report.pdf>.

¹⁴⁴ *Id.* at para. 196.

¹⁴⁵ IACHR, Report No. 65/99, Case No. 10.228, *Victor Hernandez Vasquez (El Salvador)*, 13 April 1999, paras. 65, 66, 67, available at <https://www.cidh.oas.org/annualrep/98eng/Merits/ElSalvador%2010228.htm>.

around the body should be cordoned off, and only the investigators and their staff may be allowed to enter this area; (b) color photographs should be taken of the victim because they are more likely than black-and-white photographs to reveal details about the nature and circumstances of the victim's death; (c) photographs should be taken of the site (both inside and outside) and any physical evidence; (d) the position of the body and the condition of the clothing should be duly recorded; (e) note should be taken of the following factors which might serve to determine the time of death: (i) temperature of the body (warm, cool, cold); (ii) location and degree of fixation of livid areas; (iii) cadaveric rigidity; and (iv) state of decomposition.¹⁴⁶

97. The IACHR further explained that,

in order to ensure due diligence in the conduct of a thorough and impartial investigation of a violent death, including situations that might include State agents, the Commission underscores a number of standards contained in the Minnesota Protocol, an instrument that sets out a number of basic procedures, such as identification of the victim; recovery and preservation of evidentiary material related to the death to aid in any potential prosecution of those responsible; identification of possible witnesses and collection of statements from them concerning the death; determination of the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; distinction between natural death, accidental death, suicide and homicide; identification and apprehension of the person(s) involved in the death; and bringing of the suspected perpetrator(s) before a competent court established by law.¹⁴⁷

98. With respect to crimes committed against LGBTI persons, in *Vicky Hernandez and Family v. Honduras*, the IACHR stated that

the high levels of impunity and the prevalence of violence based on prejudice require that crimes against LGBT persons receive full and unbiased investigation. States have a reinforced duty to combat generalized violence and impunity. In light of that, the IACHR considers that in such cases the duty of due diligence should be especially rigorously applied, given the historical and entrenched discrimination that this group has suffered, and which is also closely connected with the violence that affects them in particular.¹⁴⁸

¹⁴⁶ *Id.*

¹⁴⁷ IACHR, Report No. 157/18, Case No. 13.051, *Vicky Hernandez and Family (Honduras)*, 7 December 2018, para. 83, available at <https://www.oas.org/en/iachr/decisions/court/2019/13051FondoEn.pdf>.

¹⁴⁸ *Id.* at para. 86.

99. The Inter-American Court of Human Rights subsequently held in *Vicky Hernandez et. al. v. Honduras* that

to ensure the effectiveness of the investigation of human rights violations, it is necessary to avoid omissions in obtaining evidence and in following up on logical lines of investigation. The Court has specified the principal guidelines that must be observed in criminal investigations into human rights violations, which may include, *inter alia*: the recovery and preservation of evidence in order to contribute to any potential criminal investigation of those responsible; the identification of possible witnesses and obtaining their statements, and the determination of the cause, manner, place and time of the fact investigated. It is also necessary to conduct a thorough examination of the scene of the crime, and ensure that rigorous tests are performed by qualified professionals using the most appropriate procedures, and this entails guaranteeing the proper chain of custody.

In addition, the Court has indicated that when violent acts such as homicides are investigated, the state authorities have the duty to take all reasonable measures to discover whether possible discrimination is involved. This obligation signifies that when there are indications or concrete suspicions of discrimination-based violence, the State must take all reasonable steps, based on the circumstances, to gather and safeguard the evidence, explore all practical means to discover the truth, and issue fully reasoned, impartial and objective decisions, without omitting suspicious facts that may indicate discrimination-based violence. The failure by the authorities to investigate possible discriminatory motives may, *per se*, constitute a form of discrimination, contrary to the prohibition established in Article 1(1) of the Convention.¹⁴⁹

100. Jamaica's specific failure to properly investigate the murder of Dwayne Jones violates Jamaica's obligations under Article 1(1) (Obligation to Respect Rights),¹⁵⁰ Article 4(1) (Right to Life),¹⁵¹ Article 8(1) (Right to a Fair Trial),¹⁵² Article 19 (Rights of the Child),¹⁵³ Article 24 (Equal Protection),¹⁵⁴ and Article 25(1) (Right to Judicial Protection)¹⁵⁵ of the American Convention:

¹⁴⁹ *Vicky Hernandez et. al. v. Honduras*, Judgment of March 26, 2021 (Merits, reparations and costs), paras. 106, 107, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_422_ing.pdf.

¹⁵⁰ See *American Convention*, Article 1(1) (Obligation to Respect Rights), *supra* note 65.

¹⁵¹ See *American Convention*, Article 4(1) (Right to Life), *supra* note 65.

¹⁵² See *American Convention*, Article 8(1) (Right to a Fair Trial), *supra* note 65.

¹⁵³ See *American Convention*, Article 19 (Rights of the Child) *supra* note 65.

¹⁵⁴ See *American Convention*, Article 24 (Equal Protection) *supra* note 65.

¹⁵⁵ See *American Convention*, Article 25(1) (Right to Judicial Protection) *supra* note 65.

(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); and

(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

101. 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.”¹⁵⁶ 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.¹⁵⁷ In the present case, petitioner is entitled, *de facto* and *de jure*, to lodge petitions before the Commission.

¹⁵⁶ See *American Convention*, *supra* note 65.

¹⁵⁷ See *IACHR Rules of Procedure*, Article 23, available at <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basics/rulesiachr.asp>.

2. Competence of the Commission

102. The Commission is competent to receive petitions alleging human rights violations by Jamaica, which ratified the American Convention on July 19, 1978.¹⁵⁸ 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

103. 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 domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment.¹⁵⁹

104. 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.¹⁶⁰

105. 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

¹⁵⁸ See *American Convention*, *supra* note 65 (Signatories and Ratifications).

¹⁵⁹ See Article 46 of the American Convention, *supra* note 65; Article 31 of the IACHR Rules of Procedure, *supra* note 157.

¹⁶⁰ 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.

victims, preserve the evidence and safeguard the rights of every person, who in the context of the investigation may be regarded as a suspect.”¹⁶¹

106. 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.¹⁶² 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.”¹⁶³ Because the present case involves the arbitrary deprivation of the right to life,¹⁶⁴ the appropriate domestic remedy is a thorough criminal investigation to be undertaken by the Jamaican government¹⁶⁵ followed by a trial of those identified by the investigation as having taken part in Dwayne Jones’ murder.

4. Timeliness of the Petition

107. 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.¹⁶⁶ 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.”¹⁶⁷

108. 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

¹⁶¹ 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>.

¹⁶² 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>.

¹⁶³ *Id.* at para. 19.

¹⁶⁴ 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 <https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2014-HRC-IACHR-JessicaLenahan-Report.pdf>.

¹⁶⁵ “[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 120, at para. 32.

¹⁶⁶ 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 65.

¹⁶⁷ 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 157.

reasonable period of time and that the admissibility requirements pertaining to timeliness have been met.¹⁶⁸

5. Absence of Parallel International Proceedings

109. 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.¹⁶⁹

IV. CONCLUSION

110. For the foregoing reasons, the petitioner respectfully requests that 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-LGBTI 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.

¹⁶⁸ 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>.

¹⁶⁹ 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 65. 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>.