

Barriers Behind Bars

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Comparative Report on Strategies Used to Address the Rights of MSM & LGBT Populations in Prisons

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Introduction

In their bid to address the myriad issues which pervade the prison system, correctional administrators often overlook the needs of special populations; in particular, those of the men who have sex with men (MSM) and Lesbian Gay Bisexual Transgender (LGBT) populations. The Department of Correctional Services (DCS), the agency charged with the care and rehabilitation of inmates in Jamaica, has more than its fair share of problems even without taking the concerns of MSM and LGBT prisoners into consideration. Given the scarce resources and heavy workload of the DCS, initiatives aimed at meeting the needs of the MSM and LGBT prison populations in a holistic way have not been sustained. As a human rights organization, working in the island's correctional facilities, Stand Up for Jamaica (SUFJ) has played a supporting role by providing a host of rehabilitation programmes. It is in this spirit of continued support to the DCS that SUFJ has taken an interest in assessing and devising strategies to meet the underserved MSM and LGBT populations behind bars. This report represents the first step in trying to understand the rights, experiences and needs of these special prison populations. The report has been prepared against the backdrop of an acute awareness of the increased discrimination and risk of HIV and AIDS which MSM and LGBT prisoners face; these issues are explored in section one of the report. Mitigating the HIV/AIDS risk of these populations demand a basic understanding of the issues these individuals face and implementing strategies to effectively address them. The fact that DCS has limited experience in this regard, provides an opportunity for best practices to be adopted from countries around the world which are far advanced in regards to their approach to MSM and LGBT prison population. Section two of the report will review literature which highlights comparative strategies and best practices used across several countries to address the rights of MSM and LGBT inmates. These best practices will then be assessed in terms of their applicability to the Jamaican situation; an assessment which will be the focus of section three of the report.

The aim of this desk research is to identify and explore the needs and experiences of LGBT people and MSM in prison.

Its objectives are to:

- Present what is known internationally about the experiences and needs of LGBT and MSM prisoners
- Identify examples of best practice in prison and penal policy
- Analyze the needs of LGBT and MSM prisoners in Jamaica from an equality and human rights perspective; particularly as it regards access to HIV/AIDS treatment and services

MSM, LGBT and the Jamaican Society

Jamaica is reputed to be one of the most homophobic countries on earth. With a strong Judeo-Christian culture, the island's citizens has been slow to accept homosexuality as a social norm. Consensual anal sex between male adults remains outlawed¹. With the homophobic culture further supported by the perception that homosexuality is a criminal offense, Lesbian Gay Bisexual and Transgender (LGBT) people in Jamaica have faced discrimination in all arenas of the society. Amendments to the Constitution which added a Charter of Fundamental Rights made no provision for protection from discrimination on the basis of orientation or sexual identity². Even through there has been much progress in regards to acceptance of LGBT people in certain quarters, periodic surveys continue to register increasingly hostile attitudes towards members of the LGBT community. The last survey conducted saw a 14 percentage-point jump in the number of Jamaicans who hated or rejected homosexual relationships³. Acts of violence and homophobia against members of the LGBT community are perpetrated by both citizens and members of the security forces. Crimes against LGBT persons are normally dismissed as crimes of passion, even when the evidence suggests otherwise⁴. In this environment of both legislative and societal hostility, LGBT persons are denied or avoid accessing basic services, particularly health services. Gaining access to health care services adapted to their needs remains a difficulty for LGBT persons because they are hesitant to reveal their

¹ The Offences Against the Person Act section 76-77, 79, available at http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf

² The Charter of Rights (and Wrongs) – Commentary, JAMAICA GLEANER, April 5, 2011 available at <http://jamaicagleaner.com/gleaner/20110405/cleisure/cleisure3.html>.

³ Study Says Jamaicans Hate Gays but Believe in Conversion, Jamaica Gleaner, April 11, 2016 available at <http://jamaica-gleaner.com/article/news/20160411/study-says-jamaicans-hate-gays-believe-conversion>

⁴ Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, Human Rights Watch at 13, Nov. 2004, available at <http://www.hrw.org/en/reports/2004/11/15/hated-death-0>

sexual orientation to health care providers. Health care providers in Jamaica have often been unwilling to accommodate the special needs of LGBT patients and as such they do not get the care they need. The inability to access health care services, no doubt, increases the risk of transmission of sexually transmitted diseases, including HIV/AIDS, among LGBT persons as they miss out on opportunities for preventative care⁵. This problem of preventative care is even more acute for MSM because many live on the down low and maintain sexual relationships with both male and female partners. The fear of being exposed has contributed to a culture of secrecy and double lives being led by many Jamaican men. In this environment of secrecy, the spread of sexually transmitted diseases can go unchecked as officials have no real data on either the size nor the sexual behaviors and practices of the MSM population. MSM have taken to a life of secrecy because of the levels of violence that have been perpetrated against gay rights activists and members of the LGBT community. The MSM culture in Jamaica is one that is little understood. The main issues affecting MSM revolve around high-risk sexual activity, insufficient health education catered specially to their needs, skewed perception of risk, and harsh socio-cultural prejudices against non-heterosexuality. These factors, among others, combine to result in a disproportionately high HIV prevalence among MSM as revealed by global health surveys and those conducted in Jamaica. The estimated population of MSM in Jamaica is 33,000 with a reported HIV prevalence of 32%⁶. The risk of MSM contracting HIV is some 20 times higher than the general population but there continues to be a lack of comprehensive targeted intervention for this population. The introduction of gay hook up sites and apps, such as Grindr, has made it much easier for MSM to engage discreetly in high risk behaviors thus making it even more difficult to monitor their behaviour. In the absence of accurate information that is targeted and specially designed to influence the behaviour of key populations, general messaging

⁵ George Washington University Law School International Human Rights Clinic, Jamaica Forum for Lesbians, All-Sexuals & Gays (J-FLAG) et al, October 2011, Human Rights Violations of Lesbian, Gay, Bisexual and Transgender (LGBT) People in Jamaica: A Shadow Report

⁶ Jamaica Aids Support for Life, 2012, Issues Affecting Men Who have Sex With Men in Jamaica

will have little impact. It is seen especially in countries where same-sex relationships are taboo and unspoken that prevention messages simply do not reach MSM effectively and this is reflected in prevalence rates which are many times higher than that of the general population. The violence and hostility which continues to plague the LGTB community has served to cement the culture of taboo and silence even further, creating an environment of fear for MSM and LGBT people alike. The Inter-American Commission on Human Rights and the Jamaica Forum for Lesbian, All-Sexuals & Gays (J-FLAG) have documented numerous cases of murder, assault and threats meted out to defenders of LGBT persons. As with many other social issues, homophobia in Jamaica is negotiated on the basis of class, race and social status. The vulnerability associated with individuals residing in communities of low socio-economic standing is further complicated and heightened by issues of sexual orientation and non-conformist gender identities. The challenges faced by LGBT persons and MSM living in the lower income brackets are often times more acute as they have no real way of escape from either the situation of poverty or the hostility towards them. Wealth, social class and social capital can provide a degree of protection from homophobic attitudes. Survey data indicates that anti-gay attitudes are more prevalent among the poor and those without a university education⁷. J-FLAG data also indicates that acts of violence are predominantly perpetrated against LGBT persons from the lower strata of the society and that victims are normally male⁸. Despite the prevailing homophobia in the country, many Jamaicans believe that homosexuality is very prevalent in Jamaica and is present in all social classes⁹. Another perception which has heightened anti-gay sentiments and activism is the view that international players, particularly the United States Government, have been trying to force a gay agenda and acceptance of homosexual norms on the Jamaican society. It is believed that aid and grant funding from the United States is tied to acceptance of

⁷ Boxhill, Ian, 2011, National Survey on Attitudes and Perceptions of Jamaicans Towards Same-Sex Relationships

⁸ J-FLAG, December 2013, Homophobia and Violence in Jamaica

⁹ Boxhill, Ian, 2012, National Survey on Attitudes and Perceptions of Jamaicans Towards Same-Sex Relationships: A Follow Up Study

gay rights, a view which was rebuffed by a former White House official¹⁰. International pressure to repeal the buggery law and embrace non-discrimination towards LGBT people has come mostly through recommendations made by the United Nations Human Rights Committee (UNHRC) at its annual sessions. The UNHRC has in several reports and sittings over the years recommended that sections 76, 77, and 79 of the Offences against the Person Act (laws criminalizing same-sex conduct) be repealed. The Committee has also called for amendments to the Charter of Fundamental Rights and Freedoms to prohibit discrimination on the ground of sex, which under the jurisprudence of the HRC includes sexual orientation and gender identity; enactment of legislation prohibiting discrimination on the basis of sexual orientation and gender identity in all realms, including employment, housing, education, and access to health services. UNHR reports have further recommended that the Government adopt criminal legislation imposing higher sentences for hate crimes (violent crimes committed out of hate) committed based on the sexual orientation or gender identity of the victim, provide equality and human rights training, particularly in the area of LGBT rights, for teachers and staff in schools, governmental officials at all levels, and law enforcement officers, review and amend current legislation to provide individuals in same-sex relationship with the same rights as those in opposite sex-relationships and Enact legislation that recognizes the right of transgender individuals to legally change their gender¹¹. These recommendations have however been largely ignored by the Government because of the political consequences which may flow from any attempts to advance gay rights in Jamaica.

¹⁰ Jamaica Gleaner, October 2016, US Doesn't Export Gay Values, Claims Former Whitehouse Administrator, accessed at: <http://jamaica-gleaner.com/article/lead-stories/20161026/us-doesnt-export-gay-values-claims-former-white-house-administrator>

¹¹ George Washington University Law School International Human Rights Clinic, Jamaica Forum for Lesbians, All-Sexuals & Gays (J-FLAG) et al, October 2011, Human Rights Violations of Lesbian, Gay, Bisexual and Transgender (LGBT) People in Jamaica: A Shadow Report

HIV/AIDS and Prison Populations

Conditions of overcrowding, limited health care access, and the environment of fear and sexual frustration make prison a ready crucible for the rapid transmission of HIV/AIDS. The societal attitudes towards same sex relationship are often amplified in a prison setting and as such in countries with a strong anti-gay culture there is often a denial of the fact that homosexual engagement is prevalent in the prison system. There is, however, strong evidence which indicates that prisoners are prone to adopt risky sexual behaviors. When viewed through social constructivist lens, fluid/changing sexuality is an expected outcome of the social system of the prison environment. Prison subculture makes situational homosexuality permissible even as many inmates continue to hold homophobic views while engaging in same sex activity behind bars. Studies have shown that inmates who are engaged in homosexual activity in prison are actually likely to experience a change in sexual orientation; a change they may not readily admit or confess¹². Rates of HIV/AIDS infection are generally higher in prison populations as opposed to the general population and does point to increased MSM sexual activity behind bars. Globally the rate of HIV/AIDS infection in prison is between 20% and 40%¹³. While high rates of HIV/AIDS infection is driven by a number of factors which include: injecting drug users who continue to inject while incarcerated, unsafe medical practices, high rates of HIV/AIDS infection in the wider population and the increase in the number of people from this pool receiving prison sentences; they are primarily driven by same sex sexual contact between inmates while in prison¹⁴. Another critical consideration in the HIV/AIDS epidemic facing correctional institutions is the high incidences of recidivism. Given that most prisoners serve short sentences and continue to reoffend, resulting in their return to prison, their transition and mobility

¹² Lauren Gibson & Christopher Henseley (2013), The Social Construction of Sexuality in Prison, *The Prison Journal*

¹³ Jurgens et al (2011), HIV & Incarceration: Prison and Detention, *Journal of the International AIDS Society*

¹⁴ UN Office on Drugs and Crime (2006), HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response

between prison and the communities to which they return becomes quite frequent. The HIV/AIDS and health risk to the wider community in this scenario is clearly a serious concern that is oftentimes not addressed by national health systems. HIV/AIDS in prison settings should be a serious health concern for prison authorities given that international law stipulates that prisoners should attain the highest possible standard of health. This is based on the principle that prisoners retain all of their rights that are not taken away by virtue of their incarceration and includes the right to proper physical and mental health. These rights and the attendant obligations on states to uphold and make provisions for same are enshrined in Article 25 of the United Nations Universal Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social, and Cultural Rights¹⁵. Additionally, the rights guaranteed to prisoners in respect of health services has been accepted in general terms by the international community as there is agreement on the international stage that losing one's liberty is punishment enough and should not be further compounded by lack of or limited access to health care, in particular HIV/AIDS services. States therefore have an obligation to implement legislation, policies, and programmes consistent with international human rights norms, and to ensure that prisoners are provided a standard of health care equivalent to that available in the outside community. Authorities should also be minded to consider the fact that prisoners will ultimately return to the communities from which they came and as such will carry with them the HIV/AIDS contracted in prison. The HIV/AIDS epidemic common across Caribbean countries has already put a strain on the economic and social systems of these countries and as such prevention and mitigation programmes from within the prison system have to also be implemented in concert with those being carried out in the wider community. Given the multilayered dimensions of the HIV/AIDS situation in the region it has become increasingly imperative that HIV/AIDS in prison be seen as both a public health and human rights issue.

¹⁵ UN Office on Drugs and Crime (2006), HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response

Prison populations are predominantly male and most prisons are male-only institutions, including the prison staff. In such a gender exclusive environment, male-to-male sexual activity (prisoner-to-prisoner and guard-to-prisoner) is frequent. The frequency of such engagements is bound to be higher than the reported instances given the cultural attitudes, denial and fear of being exposed¹⁶. While it remains difficult to collect data on sexual activity behind bars because of the many ethical and methodological challenges, studies have shown that both consensual and non-consensual sex does occur with reported rates ranging from 1% to 10% based on what has been reported in research conducted globally¹⁷. Same sex activity in prison can be a result of the sexual orientation of prisoners but many prisoners do not identify as homosexuals and, as such, have what researchers refer to as a fluid construct of sexuality. The research data indicates that some prisoners engage in homosexual activities while behind bars but return to heterosexual norms once they are released. The sexual activities of prisoners who do not identify as homosexuals is categorized as MSM activity. As discussed earlier, The MSM population generally has higher rates of HIV/AIDS transmission, a fact which is compounded when considered along with the factors which drive HIV/AIDS transmission in prisons. The underreporting of MSM populations in prisons also makes it very difficult for HIV/AIDS intervention to be effective. LGBT populations in prisons also face their own unique risk but are more receptive to intervention because they are much more willing to admit to engaging in sexual activity. One of the greatest risk facing the LGBT population in prison is the occurrence of incidents of prison rape. A prisoner that identifies as gay becomes an easy target for acts of violence and rape perpetrated by inmates and guards alike. If data on consensual sex is difficult to come by then it is doubly so for non-consensual sex. Rape behind bars is a very complex and sensitive issue that often goes unreported.

¹⁶ UNAIDS et al, 2007, HIV and Prisons in sub-Saharan Africa: Opportunities for Action

¹⁷ Jurgens et al (2011), HIV & Incarceration: Prison and Detention, Journal of the International AIDS Society

Rape and sexual abuse are often used to exercise dominance in the culture of violence that is typical of prison life. Inmate rape, including male rape, is considered one of the most ignored crimes. Sexual and physical abuse in custody remains a tremendous human rights problem¹⁸. Data from the USA shows that rape in prison is eight to ten times higher than in the general population. One in five men has been sexually assaulted in prison, while one in ten has been raped. Among prisoners, the rate of sexual abuse is as high as 27 per cent, including rape by prison guards¹⁹. Available data indicates that rape is used as a disciplinary tactic and a control mechanism by prison authorities who not only ignore or do not prevent inmate rape, but encourage it as a punishment tool. Prisoners form alliances, hierarchies and enmities that thrive on creating an atmosphere of fear and control where trade of sexual favors and sexual enslavement is widespread²⁰. However, those involved in sexual abuse do not consider themselves to be bisexual or homosexual. In this kind of environment the spread of HIV/AIDS in prisons can persist unabated²¹. Given that force is exercised and that condoms are not used, victims of rape and other forms of sexual violence are at higher risk of contracting HIV. The issue of the dangerous links between rape and HIV in prisons has been brought to public attention throughout the world. Studies of individual correctional facilities, especially in the USA, highlight HIV transmission occurring through prison rapes²².

¹⁸ Human Rights Watch (2002). World Report; Human Rights Watch (1999). World Report. Special Programs and Campaigns—Prisons

¹⁹ Human Rights Watch (1991). No Escape: Male Rape in USA Prisons

²⁰ Parenti J (1999). Rape as a Disciplinary Tactic

²¹ US Centers for Disease Control and Prevention (2002). Prison Rape Spreading Deadly Diseases

²² UNAIDS et al, 2007, HIV and Prisons in sub-Saharan Africa: Opportunities for Action

Comparative Strategies for MSM & LGBT Prison Populations

LGBT and self-identified MSM prisoners face unique vulnerabilities in the prison system. In addition to their increased risk of HIV/AIDS transmission, they face the constant threat of rape and sexual abuse. The stigma and discrimination attached with being labelled as MSM or LGBT in prison means that these prisoners are re-victimized and in essence are in a prison within a prison. The challenges and barriers they face in sometimes even being allowed to participate in regular activities within prison can serve as a hindrance to the full protection of their human rights. The special needs and challenges of LGBT and MSM offenders pertain to protection from sexual abuse and rape, how complaints are handled in the instances of rape and abuse, health care, accommodation in rehabilitation programmes, maintenance of family ties, preparation for release and post-release support. In respect of international standards governing the treatment and management of LGBT and MSM prisoners; there are no special rules that apply, however, the general rights of these prisoners are covered under the following international conventions:

- Universal Declaration of Human Rights
- International Convention on Civil and Political Rights
- United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- United Nations Standard Minimum Rules for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

In addition to this body of international human rights law, there is general agreement in the international community that Governments should pay particular attention to the needs of LGBT and MSM prisoners. This agreement was enshrined in The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity which was adopted in 2006. Principle nine of the agreement has mandated that states ensure that placement in

detention does not result in further marginalization and abuse of LGBT people and MSM. The principle further mandates that states address issues of health care, protection from violence and training in non-discrimination and equality for staff working in prisons²³. In seeking to uphold the rights of LGBT and MSM prisoners and also reduce the risks of HIV/AIDS transmission some countries have adopted alternative sentencing for LGBT/MSM offenders. In recognition of the extremely vulnerable position which imprisonment places this category of offenders, programmes in the United States seek to ensure that they are diverted to rehabilitation services rather than being sent to prison in the first place. One such programme is operated by the Transgender, Gender Variant and Intersex, Justice Project (TGIJP) in California. The programme seeks to reduce the overall number of such people going into jail or prison by diverting them out of the system early. Specifically, TGIJP assists LGBT people in the San Francisco Bay Area awaiting sentencing to petition their judges to divert them into plans that would connect them to needed health, social and economic services, rather than sentencing them to jail or prison. These alternative plans can connect clients to services and opportunities that address the underlying conditions that lead to arrest in the first place²⁴. In regards to prison management, prisons in some Nordic countries have pursued a policy of employing staff of different orientations²⁵. This strategy is aimed at providing a point of access to prison administrators given that, as is the case with racial and ethnic minorities, members of the LGBT and MSM community feel more comfortable communicating with staff members of a similar orientation. The recruitment of LGBT staff members also sends a strong message of non-discrimination to other staff members. LGBT and MSM staff members also serve as a critical contact point for monitoring and preventing incidences of rape and sexual abuse. They also play a key role in HIV/AIDS prevention and counselling among LGBT and MSM prisoners.

²³ Accessed at: www.yogyakartaprinciples.org/index.php?item=25#_Toc161634693

²⁴ For further information, see www.tgjip.org

²⁵ United Nations Office on Drugs and Crime (2009), Handbook on Prisoners with Special Needs

Ensuring access to justice for LGBT and MSM prisoners is another critical strategy that is practiced in first world countries. Organizations which deal with LGBT issues are allowed to take up the cases of these prisoners through the provision of legal services and legal aid. In this way LGBT and MSM prisoners do not languish in prison for lack of legal representation. Access to justice for LGBT and MSM people can be a challenge in a culture where they are discriminated against. Not only are they at risk of receiving harsher punishment due to the prejudice of judges but they also may not be able to secure the services of a lawyer because of their sexuality²⁶. Prison authorities in the United States, Canada and the United Kingdom in recognizing the risk of prolonged incarceration for this vulnerable group has created partnerships with LGBT advocacy groups which provide legal services which cater to the needs of LGBT and MSM prisoners. Separating LGBT and MSM prisoners from the general population has also been accepted as an international best practice. The aim of classification and allocation of prisoners should be to ensure that LGBT and MSM prisoners are placed wherever is best for their safety²⁷. While it is the common practice to segregate LGBT prisoners for their safety, it can become a discriminatory act given that prisoners will be classified for segregation based on whether or not they exhibit effeminate behaviour. The risk with this kind of approach is that self-identified gay and MSM men who do not behave in effeminate ways may actually end up being housed with the general population. The best practice is for placement and classification to be done in consultations with prisoners²⁸. The particular classification and placement of transgender prisoners is also an issue which prison authorities have resolved through a consultative process.

²⁶ Sathbh Walshe (2012), The Grim Truth of Being Gay in Prison, The Guardian, accessed at : <https://www.theguardian.com/commentisfree/cifamerica/2012/mar/07/grim-truth-gay-in-prison>

²⁷ Yogyakarta Principles, Principle 9 A

²⁸ United Nations Office on Drugs and Crime (2009), Handbook on Prisoners with Special Needs

Maintaining contact with the outside world is an important part of the rehabilitation process for prisoners and is a right that should be extended to all prisoners regardless of orientation. In jurisdictions where conjugal visits are permitted for heterosexuals, there has been an extension of this facility to LGBT and MSM prisoners. In July 2007 the National Human Rights Commission of Mexico announced that the city's prison system had allowed the first conjugal visit to a prisoner with a sexual orientation other than heterosexual, in line with the Commission's recommendations. As reports of abuse and sexual assault of LGBT and MSM prisoners have increased over the years there has been a need for country specific policy guidelines to be developed to ensure their protection and safety within the prison system. The American Bar Association Criminal Justice Standards on the Treatment of Prisoners is a model of such a policy guideline. A 2010 revision of the standards included particular provisions governing LGBT and MSM prisoners²⁹. The standards have been adopted by correctional facilities across America and are used by the association to monitor the treatment of these inmates by prison authorities. In Ireland, the Irish Penal Reform Trust has been pursuing a number of initiatives to increase research on LGBT and MSM populations in prisons. The Trust has noted that globally there is limited research on the experiences and needs of LGBT prisoners³⁰. In a bid to provide policy guidance on the treatment of the LGBT population in prison, the organization has forged a partnership with the prison authorities in Ireland to conduct research and provide insights on the challenges and issues faced by this vulnerable group. This is another international best practice in regards to the strategies needed to address the needs of the LGBT and MSM populations. Research in this area is desperately needed as LGBT and MSM prisoners continue to be a hidden and overlooked group in the prison industrial complex. The neglect of LGBT and MSM prisoners stem from the fact that authorities do not know much about the needs of this population. The provision of condoms in prisons is an initiative which is implemented in several prisons as a preventative measure and has been effective in reducing HIV/AIDS risk behind bars. Many prison

²⁹ Margaret Colgate Love & Giovanna Shay (2012), Gender and Sexuality in the ABA Standards on the Treatment of Prisoners. Western New England University School of Law.

³⁰ Irish Penal Reform Trust (2016), Out on the Inside, The Rights, Experiences and Needs of LGBT People in Prison

systems, including in Australia, Brazil, Canada, Indonesia, the Islamic Republic of Iran, South Africa, some countries from the former Soviet Union, and a small number of jail and prison systems in the United States, provide condoms³¹. This strategy has been proven to reduce the HIV/AIDS risk of LGBT and MSM prisoners.

In response to concerns about rape and sexual assault behind bars United States law makers passed in law the Prison Rape Elimination Act (PREA) in 2003. The Act established the National Prison Rape Elimination Commission (NPREC) which was charged with undertaking a study on the extent and effects of prison rape. The commission was also tasked with developing standards to be implemented by prison authorities to prevent rape and sexual assault. The standards require correctional facilities to engage in prevention planning, responsive planning, training and education, screening for risk of sexual victimization and abusiveness, reporting, investigations, medical and mental care, data collection and review, audits and compliance. The standards require inmates to be screened for risk of being sexually abused or sexually abusive; that screening information is then used to inform housing, bed, work, education, and program assignments for inmates. The goal is to keep those individuals at high risk of victimization away from those at high risk of committing abuse. However, facilities may not simply place victims in segregated housing against their will unless a determination has been made that no alternative means of separation is available, and even then only under specified conditions and with periodic reassessment. The standards requires agencies to document instances when a decision is made to place someone in segregated housing. Another important aspect of the standard is the reporting mechanism which demands that measures be put in place to ensure victims remain anonymous if they so desire³².

³¹ World Health Organization et al (2007), Effectiveness of interventions to manage HIV in prisons – Provision of condoms and other measures to decrease sexual transmission. (Evidence for action technical papers)

³² National PREA Resource Centre (2016), PREA Essentials, accessed at: <https://www.prearesourcecenter.org/training-technical-assistance/prea-essential>

Situational Assessment for MSM & LGBT Prison Populations in Jamaica

Recent research conducted by Stand Up for Jamaica (SUFJ) in partnership with the Caribbean Vulnerable Communities (CVC) confirms the stigma and discrimination faced by LGBT and MSM inmates in the Jamaican prison system. The country's main adult male prisons, The Tower Street Adult Correctional Facility, commonly referred to as General Penitentiary (GP) and the St. Catherine Adult Correctional Facility, houses self-identified and prisoners perceived as LGBT or MSM in a segregated part of both prisons known as the "Special Block" or "special". Both are maximum security facilities where men serve sentences from 30 days to life imprisonment. Interviews with former inmates of the block, who participated in a health and wellness follow up research study conducted by SUFJ, confirmed that being identified as a LGBT person or as an MSM placed them at greater risk of being sexually and physically abused³³.

SUFJ, through its human rights advocacy, continues to provide support to these inmates, who face stigma and discrimination based on the conditions of incarceration; their sexuality and/ or their HIV status.

Tower Street houses between 1600 to 1800 inmates, 150 of which are self-identified MSM. St. Catherine houses some 927 self-identified heterosexuals and 65 self-identified MSM. The prevailing conditions which generally lead prisoners to engage in sexual activity has been observed among these inmates with particular concerns being raised about the insufficient attention being paid to their sexual health, which then leads to unhealthy sexual and lifestyle practices.

³³ Sandra Alvaranga (2016), SUJF/CVC Health and Wellness Intervention for MSM Former Inmates Post Project Research

In response to the problems of HIV/AIDS, stigma and discrimination, The Caribbean Vulnerable Communities/El Centro de Orientación e Investigación Integral (CVC/COIN) and Stand Up For Jamaica (SUFJ) offered a health and wellness programme designed to include the incarcerated MSM populations. As a post incarceration follow up for the MSM population, SUFJ and CVC/COIN offered a three day workshop to support, empower and facilitate reintegration into society.

The follow up research was conducted to determine the extent to which the two interventions positively affected this group of participants' knowledge levels, behaviour and coping skills. The research revealed that ex-inmates found it very difficult to cope with the double stigma of being imprisoned in the first instance and then placed on the "Special Block." 75% of respondents said that they feared being raped and considered suicide while incarcerated³⁴. An interesting finding from the follow up research highlighted the fact that even though the health and wellness programme had increased the awareness of the inmates in regards to healthy lifestyle choices, it did not consistently translate into sound sexual practices and indicates that the prison environment is not conducive in this regard. This finding from the research is related to the fact that the Jamaican authorities have refused to provide condoms for prisoners. It has been argued that the distribution of condoms is a tacit embrace of homosexual lifestyles and as such the Government feels forced to deny or oppose the introduction of condoms behind bars as it may prove politically and ethically problematic. The church has been particularly strident in its opposition to the issuance of condoms in prisons. Correctional employees have also been opposed to any initiative which would provide condoms for prisoners. A Commissioner of Corrections who announced that condoms will be distributed was forced to resign. Prison Wardens went on strike and riots broke out at Tower Street Correctional Facility and sixteen LGBT and MSM

³⁴ Sandra Alvaranga (2016), SUJF/CVC Health and Wellness Intervention for MSM Former Inmates Post Project Research

prisoners were killed³⁵. That incident, which occurred in 1997, was followed by riots in 2010 when the suggestion was made yet again.

The former Minister of Health, Dr. Horace Dalley, in 2006, also made a call for condoms to be issued in prisons to stem the spread of HIV/AIDS but that suggestion was not met kindly by the Ministry of National Security. Both the Minister of Health and the then Minister of National Security met and decided against the distribution of condoms in prison³⁶. SUFJ's Executive Director has also faced significant backlash for supporting the call for condoms to be issued in prisons.

In respect of the conditions of the "Special Block" in which LGBT and MSM are housed, the 2010 Jamaica mission of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment found that, "their separation led to a loss of privileges of a punitive character, such as work and recreation, including the use of the library and playing field". In referencing the security section at Tower Street, the rapporteur noted that detainees were locked up in dark, solitary cells without a toilet or water, and had nobody to call for help³⁷.

A testing programme carried out by the Ministry of Health in the Tower Street Correctional Facility in 2005 found that the HIV transmission rate in the general population was 3.3% but was 25% among MSM prisoners, proving that they suffer a disproportionate burden of infection; a condition which persists because of a lack of access to effective HIV prevention methods³⁸.

³⁵ George Washington University Law School International Human Rights Clinic, Jamaica Forum for Lesbians, All-Sexuals & Gays (J-FLAG) et al, October 2011, Human Rights Violations of Lesbian, Gay, Bisexual and Transgender (LGBT) People in Jamaica: A Shadow Report

³⁶ Reuters News (2006), Jamaica Decides Not to Give Out Condoms in Prisons, accessed at : <http://petershope.blogspot.com/2006/07/jamaica-decides-not-to-give-out.html>

³⁷ U.N. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak - Addendum - Mission to Jamaica, U.N. Doc. A/HRC/16/52/Add.3 (Oct. 11, 2010)

³⁸ Katherine Andrinopoulos et al (2011), Homophobia, Stigma and HIV in Jamaican Prisons, accessed at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3010280/>

The levels of discrimination and stigma faced by MSM and LGBT prisoner continues to hinder effective HIV/AIDS intervention in the Jamaican prison system. Research interviews have revealed that inmates sometimes end up on “special” for protection from violently homophobic prisoners who threatened to kill them. They are placed there by a warder or moved there themselves, as it is considered the only safe place in the prison for MSM and LGBT inmates. Once located on “special”, however, inmates are branded as homosexuals for life both in the prison and their communities on the outside. Fear of being labelled a homosexual, and the chronic nature of this social exclusion, has been emphasized more than fear of HIV and related stigma. Inmates on “special” are excluded from most if not all prison activity and are relegated to remove refuse or clean toilets. This further debases these inmates and makes them socially untouchable. Interaction with an inmate from “special” means risking contamination with the label of homosexual, and also the risk of actually being assigned to that section of the prison³⁹. It should be noted, however, that there is a strong commitment to HIV/AIDS prevention and testing by the Jamaican authorities⁴⁰ but the prevailing homophobia acts as a barrier to effectively preventing and treating HIV/AIDS in prison settings. The fact that prisoners have, in the past, volunteered to receive HIV testing, with participation rates as high as 63%⁴¹, indicates that there is an opportunity to introduced prevention programmes on a more consistent basis with particular emphasis on the high risk MSM and LGBT population.

³⁹ Katherine Andrinopoulos et al (2011), Homophobia, Stigma and HIV in Jamaican Prisons, accessed at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3010280/>

⁴⁰ Ministry of Health Jamaica (MOH). Jamaica HIV/AIDS National Strategic Plan 2002–2006. Kingston, Jamaica, West Indies: 2001 Oct.

⁴¹ Katherine Andrinopoulos et al (2010), Establishment of an HIV/sexually transmitted disease programme and prevalence of infection among incarcerated men in Jamaica

Conclusion and Recommendations

Despite the high levels of homophobia which continues to impede the effectiveness of HIV/AIDS treatment and prevention programmes in Jamaica's correctional facilities, the commitment of the Jamaican Government to the reduction of HIV spread and the willingness of inmates to participate in voluntary testing provides a glimmer of hope. Through sustained advocacy and evidenced based approaches, the changes required to improve the treatment of MSM and LGBT prisoners so that they can access HIV care and support more effectively can be achieved. It is with this hope that the following recommendations are made:

- Review criminal legislation relating to same sex relationships between consenting adults
- Pass into law prison rape prevention legislation and attendant standards and regulations
- Ensure that LGBT and MSM persons are not discriminated against in consideration for non-custodial measures and sanctions on the basis of their sexual orientation and gender identity. As with all offenders, LGBT offenders who have committed non-violent offences and who do not pose a risk to society should benefit from non-custodial sanctions and measures, better suited to their social reintegration. In this context, sentencing authorities should be made aware of the extreme vulnerability of LGBT persons in prisons.
- Develop policies and strategies that ensure the maximum possible protection of LGBT and MSM prisoners, which prohibit discrimination on the basis of sexual orientation and gender identity
- Ensure disciplinary action of staff who fail to respect such principles, recognize prisoners' right to privacy with respect to their sexual orientation and gender identity, and which facilitate their social reintegration in an effective manner. To consult with community representatives of LGBT groups and organizations in formulation of appropriate policies and strategies. To develop measurable standards to assess and evaluate the outcomes of such strategies and practices.

- Ensure that staff training includes awareness-raising regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identify.
- Assist LGBT and MSM prisoners in accessing legal counsel, legal aid and paralegal aid services from the outset of their detention, without discrimination. To provide names and contact details of organizations that assist LGBT persons in the criminal justice system.
- Ensure that LGBT and MSM prisoners undergo a full health screening on entry to prison as with all prisoners, and that they receive medical care equivalent to that in the community and to that which other prisoners receive.
- HIV testing, screening and prevention programmes should be scaled up and consideration should once again be given to the distribution of condoms.