

Reply

of the Federal Government to the minor interpellation tabled by the Members of the German Bundestag Volker Beck (Cologne), Josef Philip Winkler, Kai Gehring, Marieluise Beck (Bremen), Alexander Bonde, Dr Uschi Eid, Thilo Hoppe, Ute Koczy, Kerstin Müller (Cologne), Winfried Nachtwei, Omid Nouripour, Claudia Roth (Augsburg), Manuel Sarrazin, Rainer Steenblock, Jürgen Trittin and the Alliance 90/The Greens parliamentary group
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The Status of Homosexuals in Jamaica

Preliminary remarks by the questioners

Gay people are in a critical situation in Jamaica. Homosexuality is illegal, and homophobia is deep-rooted in Jamaican culture. Prison sentences of up to 15 years are imposed simply for holding hands. According to media reports, homophobic violence and murders have steadily increased in frequency over recent years (see, for example, *ARD Weltspiegel*, 6 May 2007 and *NEON* magazine, February 2008). Gays are frequently the victims of mob violence and even lynching, and it is by no means uncommon for the police to be actively involved in these scenarios. Brian Williamson, leader of the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG), was murdered in 2004, and the same fate befell Lenford Harvey, the openly gay coordinator of AIDS support programmes in Jamaica, in 2005 (see article *Tödliche Hetze im Dancehall-Reggae: Der Mord an Brian Williamson und die jamaikanischen Hatesongs* [Hate and Death in Dancehall Reggae: the Murder of Brian Williamson and Jamaican Hatesongs], by Klaus Jetz, Lesbian and Gay Federation in Germany (LSVD), in: *Informationsstelle Lateinamerika*, No. 278, September 2004; <http://www.ila-bonn.de/artikel/278jamaicareggae.htm>).

Homophobic lyrics feature in the repertoires of many of Jamaica's reggae and dancehall stars, but clergymen, trade unions and the Jamaican Government also foment gay hate. For example, in an article published on the front page of the *Sunday Herald* in April 2006, Jamaica's Prime Minister Bruce Golding stated that homosexuals would find no solace in any cabinet formed by him, and in May 2008, he asserted that homosexuality had no place in Jamaica (see http://www.queer.de/detail.php?article_id=8787). Under pressure from Jamaica and other countries, three gay rights groups were excluded from

the 2008 High-Level Meeting on AIDS, which was organized by UNAIDS and took place in June this year.

The CDs and lyrics of Jamaica's homophobic reggae artistes are widely available in Germany, and concerts regularly take place. Although most reggae fans cannot be accused of homophobia, it is intolerable that money is being made in Germany with homophobic music which glorifies violence.

“Conditions in Jamaica have shown us the extent of the anti-gay violence that can be fomented by the hysterical and homophobic rantings of these crazy artistes. The messages coming from the stage work people up into a frenzy and provoke them to go and beat up and kill gays. As a result, it is a regular occurrence in Kingston, and elsewhere in the Caribbean, for men who are gay, or perceived to be gay, to be hounded through the streets and subjected to savage attacks which often end in death.”
Hassmusik ist Volksverhetzung: Homofeindlicher Musik Einhalt gebieten! [Hate Music Incites Violence: Putting a Stop to Gay Hate Lyrics], by Klaus Jetz, in: *respekt*, March 2008:

http://www.lsvd.de/fileadmin/pics/Dokumente/News/Respekt/respekt0802_hassmusik.pdf).

In the Reggae Compassionate Act, which was signed in 2007, several artistes pledged not to make statements or perform songs that incite hatred or violence against anyone from any community, including homosexuals. However, the performers concerned frequently break the pledge or even deny signing it at all; according to information from the LSVD and the German Embassy in Kingston, one of them is the artiste Sizzla

(http://lsvd.de/fileadmin/pics/Dokumente/Homosexualitaet/Sizzla_FactSheet.pdf). Despite being listed in the Schengen Information System (SIS) as persons to be denied entry to the Schengen area, both Bounty Killer and Sizzla were able to enter the Schengen area in March and May and performed in various EU countries, including Germany, although Sizzla was then barred from entering Spain (http://www.queer.de/detail/php?article_id=8841). More concerts in Germany are already been planned (http://www.queer.de/detail/php?article_id=8849).

The Alliance 90/The Greens parliamentary group has made various enquiries concerning the background to this situation.

It would seem that the singer Bounty Killer had already entered the Schengen area prior to the Schengen alert, with the result that he was able to enter Germany and perform there. According to the Federal Ministry of the Interior, the French Embassy in Jamaica issued Sizzla with a Schengen visa before the German authorities were able to place the alert in the Schengen Information System (SIS) (Bundestag Printed Paper 16/9547).

In Germany, dealers who distribute these “hate music” CDs, whose lyrics incite the public to commit violence and murder, point out that these items are not “indexed” – i.e. they do not appear on the List of Media Harmful to Young Persons maintained by the Federal Department for Media Harmful to Young Persons (BPjM) – so they see no reason to discontinue merchandising them. The use of audio recording media for incitement to violence and murder is prohibited in Germany under Section 111 in conjunction with Section 11(3) of the Criminal Code. However, the online retailer amazon has provided the following statement on the distribution of hate music:

“amazon does not sell banned or indexed material ... In assessing whether a product is suitable for distribution, we do not undertake our own evaluation but rely on the advice of those agencies whose job it is to evaluate such content. It goes without saying that we rigorously abide by the List of such material kept by the Federal Department for Media Harmful to Young Persons (BPjM).” (Letter dated 16 April 2008 from amazon.de to Volker Beck, MdB).

In Germany, it is illegal to earn money by selling hate music. This shows a modicum of solidarity with the victims of homophobic violence and human rights violations in Jamaica and, indeed, elsewhere in the world.

We ask the Federal Government:

- 1. What knowledge does the Federal Government have of the persecution and discrimination of gays in Jamaica by the state and non-state actors?*

Homosexuality per se is not illegal in Jamaica. However, anal intercourse (“buggery”) is prohibited under the Offences Against the Person Act (Article 76), as are “acts of gross indecency with another male person” (Article 79). The campaigning organization Jamaica Forum of Lesbians,

All-Sexuals and Gays (J-FLAG) argues that “gross indecency” can be construed to mean any kind of physical intimacy.

The majority of the Jamaican population is opposed, and indeed hostile, to all forms of homosexuality, and so aggression from the general public against members of the gay community is by no means a rare occurrence.

2. Does the Federal Government have access to recent statistics concerning violence towards, and murders of, homosexuals in Jamaica?

Relative to its population size, Jamaica has had one of the world’s highest murder rates for many years. There were more than 700 murders during the first half of 2008 alone (to mid June). The Federal Government has no knowledge of whether any of the victims were gay.

Nor does the Federal Government have reliable data available on gay-hate-related crimes of violence.

3. How many criminal prosecutions were brought against homosexuals in each year over recent years?

The Federal Government has no information available about prosecutions brought against homosexuals. According to human rights organizations, there have been no such prosecutions for at least 12 months.

4. How is the Federal Government addressing the persecution and discrimination of homosexuals as issues in its bilateral negotiations?

The Federal Government works actively for the protection and promotion of human rights on a bilateral basis, in international forums and within the EU framework. This includes the protection of minorities and measures to combat discrimination on grounds of sexual orientation.

5. To what extent is the German Embassy providing support for organizations such as J-FLAG in Jamaica, and to what extent is protection being granted to gay activists?

The German Embassy in Kingston works with various Jamaican human rights organizations. A human rights project, to be funded by the Federal Foreign Office, has recently been agreed with one of the best-known of these organizations, namely Jamaicans for Justice. The aim of the project is to provide information to socially disadvantaged and vulnerable groups about their rights and the opportunities to assert them; this includes gay rights.

The Jamaican state has an obligation to grant protection to gay rights campaigners who may be at risk. The European Union Guidelines on Human Rights Defenders, adopted by the Council of the European Union, requires embassies to seek to pursue a proactive policy of support towards human rights defenders as far as possible.

6. What statistics are available to the Federal Government concerning gay Jamaican asylum seekers in the Federal Republic of Germany and other EU countries? What is the practice regarding recognition and deportation?

No statistics are collected about grounds for asylum, so it is only possible to comment on the asylum applications lodged and the decisions taken.

From 1 January 2000 to 31 May 2008, a total of 21 asylum applications were lodged in Germany by Jamaican citizens. In none of these cases was asylum or refugee status granted. Further information about the EU Member States can be accessed on the eurostat website (click on: "Population and Social Conditions").

In the event of an applicant credibly establishing a fear of persecution on grounds of homosexuality, refugee status may be granted under Section 3 of the Asylum Procedure Act. However, of the 1336 Jamaican citizens residing in the Federal Republic of Germany as of 31 May 2008 (source: Central Register of Foreign Nationals/*Ausländerzentralregister*), none had been recognised as a person entitled to asylum or had been granted refugee status. The Federal Office for Migration and Refugees, which is responsible for examining asylum applications, was able to identify one case in which the applicant had sought asylum on the basis of his homosexuality. However, the application was rejected as the case lacked credibility; the applicant also failed to disclose an earlier period of residence in Germany under a different name and nationality.

Pursuant to Section 71 (1) of the Residence Act, the deportation of foreign nationals is a matter for the Aliens' Authorities of the federal states (*Länder*). Statistical data collected by the Federal Police reveal that one Jamaican citizen was deported to Jamaica, by air, in 2007. Three deportations to Jamaica took place between January and May 2008.

7. *In the Federal Government's view, does the extreme violence against homosexuals in Jamaica warrant the issuing of a travel warning by the Federal Foreign Office – whereas the issue has to date only been mentioned briefly in its travel advice – and if not, why not?*

Travel warnings are issued if travellers need to be warned about the general situation in a specific country (or a specific region of a country) and advised not to travel, e.g. if there is an acute risk to life and physical integrity due to war or civil war, a very high risk of attacks/abduction, or other uncontrollable hazards. A travel warning is only issued on the basis of verified information and in close consultation with Germany's diplomatic mission in-country, if necessary taking account of the German security agencies' assessments of the local situation. At present, travel warnings are in place for Afghanistan, Haiti, Congo (Democratic Republic), the Gaza Strip in the Palestinian territories, Iraq and Somalia.

The travel and security advice provided by the Federal Foreign Office, which refers to the "hostile attitude of a large section of the population towards, and frequent assaults on, homosexuals", accurately reflects the situation in Jamaica. To date, none of the tourists (1.7 million in 2007, excluding cruise-ship passengers) who have visited Jamaica have been affected, to the Federal Government's knowledge. A travel warning would therefore be disproportionate. J-FLAG has also spoken out against a boycott of Jamaica in the tourists' main countries of origin (USA, Canada, UK), although this is currently under discussion among gay rights organizations outside Jamaica.

8. *To the Federal Government's knowledge, which Jamaican bands or singers who perform in Germany and/or whose CDs are available in Germany are known to incite murder and violence?*

In response to the application lodged by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) on 4 April 2008, the Federal Department for Media Harmful to Young Persons (BPjM), in its decision of 14 May 2008, added the CD "Wow ... the story" by the

singer Baby Cham, with contributions by Bounty Killer, to Sublist B of the List of Media Harmful to Young Persons. It was a song entitled “Another Level”, performed by Baby Cham together with Bounty Killer, which was a major factor prompting the material’s inclusion in the List.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), in a letter dated 9 November 2004, also requested the inclusion of the CD “My crew, my dawgs” by the artiste T.O.K. in the List. In a letter dated 22 November 2004, the Ministry also applied for the CD “Log On” by Elephant Man to be included in the List of Media Harmful to Young Persons.

In its decision of 14 April 2005, the Federal Department for Media Harmful to Young Persons (BPjM) opted against listing the CD “My crew, my dawgs” in light of credible statements from legal representatives that only around 400 copies of the CD had been sold in 2004, and because the company concerned undertook not to distribute the CD in future, or to do so only once the incriminating content, namely lyrics which incite gay hate, had been removed.

In the case of Elephant Man’s CD “Log On”, the company concerned had informed the BPjM, in a letter dated 19 May 2005, that in view of the Ministry’s request for the indexing of the CD, it had withdrawn the CD from sale. The BPjM therefore suspended the proceedings.

The BPjM carries out checks at regular intervals to determine whether the conditions which led to the suspension of the indexing proceedings are still in place. The checks in these particular cases, including those carried out very recently, have revealed that the companies concerned are no longer selling these audio products on the Internet and have thus fully complied with their obligations. However, it has also been noted recently that the CDs are available as second-hand items, and that they can be obtained from private sellers on sites such as amazon and eBay. In light of this changed situation, the BPjM has resumed the proceedings. At its meeting on 7 August 2008, the BPjM’s Panel of Twelve will make a fresh decision on the possible indexing of the CDs “My crew, my dawgs” by T.O.K and “Log On” by Elephant Man.

Besides the artistes mentioned above – Baby Cham, Bounty Killer, T.O.K. and Elephant Man – the Federal Government is aware of several other reggae musicians, such as Sizzla, Beenie Man and Capleton, who have each produced numerous CDs – more than 20 albums in the case of

T.O.K – and whose individual songs also feature on various reggae samplers.

The Federal Government currently has no information as to whether these CDs also include lyrics which promote gay hate. In 2007, several reggae and dancehall artistes signed the Reggae Compassionate Act, and pledged not to make statements or perform songs that incite hatred or violence against anyone from any community, including homosexuals. In the event of violations of this voluntary commitment, the Federal Government will consider whether to initiate further indexing proceedings. The Federal Ministry has begun to scan the albums on a systematic basis and examine the lyrics to determine whether their content may warrant inclusion on the List, in order to protect young people.

9. *What is the Federal Government's position on the fact that these songs are freely available in Germany, and what efforts is it making – apart from indexing a single CD by Bounty Killer, according to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) – to ensure that the BPjM systematically indexes songs and CDs with homophobic and hate content?*

Please see the reply to Question 8.

10. *Does the Federal Government consider that in indexing proceedings concerning hate music which incites people to commit murder, Paragraph 18 (4) of the Act Concerning the Protection of Young Persons in Public (Youth Protection Act) (Jugendschutzgesetz – JuSchG) is an adequate instrument to achieve the objective of preventing crime and incitement to hatred and violence? Is the Federal Government considering the amendment of Paragraph 18 (4) of this Act to the effect that this paragraph shall not apply to cases of incitement to commit murder and violence?*

It should be noted, first of all, that Section 4, paragraph 18 ff. of the Youth Protection Act (JuSchG), regulates the restriction of distribution channels in order to protect children and young people. Adults' access to indexed media is not restricted under the Youth Protection Act. However, if the content of the media includes incitements to hatred or violence, glorifies violence or includes some other form of prohibited content, its dissemination is punishable by law, e.g. under Sections 111, 130 or 131 of the Criminal Code.

Under Paragraph 18 (4) of the Youth Protection Act, the inclusion of media in the List may be dispensed with in cases of negligible significance. It is the BPjM's Panels which are entitled to decide, at their discretion, whether or not the criterion of "negligible significance", within the meaning of Paragraph 18 (4) of the Youth Protection Act, is fulfilled. The factors to be considered by the Panels in their decision are the medium's degree of harmfulness to young persons and the extent of its dissemination (Decisions of the Federal Administrative Court (BVerwGE) 23, 112, (122f.); 39, 197 (199)).

In light of the decisions of the Federal Administrative Court, the Federal Government considers that Section 18 (4) of the Youth Protection Act and its provisions are essential to ensure effective protection of young people from harmful media: when their attention is drawn to the provisions of Section 18 (4) of the Youth Protection Act, the companies involved in indexing proceedings often opt voluntarily to discontinue the dissemination of these or other media with similar content in future. In this way, the indexing process has a beneficial effect, in terms of protecting young people from harmful content, which extends beyond the individual case at hand. Furthermore, the BPjM regularly checks whether the conditions which led to the suspension of the proceedings are still in place.

Attention is also drawn to the reply to Question 8.

11. What is the Federal Government's view on the position of online retailer amazon.de which, despite being aware of the content (incitement to murder) of these Jamaican singers' CDs, has not withdrawn them from sale on the grounds that these items have not been indexed by the BPjM?

Please see the reply to Question 8.

12. To the Federal Government's knowledge, are amazon.de or any other retailers currently under investigation for the dissemination of material whose content includes incitements to crime, and if not, why not?

Prosecutions for violations of criminal law are a matter for the prosecution authorities of the federal states (*Länder*). The Federal Government is not privy to information about their investigations.

13. Which other opportunities can the Federal Government identify to prohibit the sale in Germany of this material, whose lyrics include incitements to homophobic murder, and to take appropriate action against these musicians if they perform in Germany?

Depending on the specific content of the lyrics, they may constitute criminal offences as defined in Section 130 (incitement to hatred and violence), Section 111 (public incitement to crime), or Section 131 (representation of violence) of the Criminal Code. The prosecution authorities are *ex officio* obliged to investigate these crimes. Attention is also drawn to the reply to Question 8.

14. Which incitements to violence and murder disseminated on CDs have been the subject of criminal investigations, and what were the outcomes?

If the content of the lyrics violates criminal law, the relevant investigations are a matter for the prosecution authorities of the federal states (*Länder*). The Federal Government is not privy to information about their investigations.

15. Is the Federal Government seeking a voluntary commitment from the music industry that it will not disseminate hate music? Alternatively, which other measures is the Federal Government pursuing?

Please see the reply to Question 13.

16. Is the Federal Government seeking a voluntary commitment from concert promoters so that bands and singers who perform hate music are henceforth denied any opportunity to perform live? Alternatively, which other measures is the Federal Government pursuing?

Please see the reply to Question 13.

17. With reference to Question 8, in which cases has the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) requested the listing of specific items, and what were the outcomes? Why were no applications made in other cases?

Please see the reply to Question 8.

18. With reference to Question 8, has the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) obtained information from gay rights organizations as to which singers and bands have come to their attention in this context? If so, what were the outcomes? If not, why not?

Please see the reply to Question 8.

19. What information has the Federal Government obtained from the Land Ministries of the Interior, as the ministries responsible, about the concerts staged by these Jamaican singers in the various federal states, and, according to reports published in Internet forums, the possibly homophobic statements made at these concerts?

Please see the reply to Question 14.

20. To the Federal Government's knowledge, why have the Land Interior Ministries of North Rhine-Westphalia, Bavaria and Baden-Württemberg, where concerts by Sizzla and Bounty Killer have taken place, failed to take any measures to terminate these performers' stay in Germany despite the alerts in the Schengen Information System, and what is the Federal Government's position on this lax attitude on the part of the federal states?

The Federal Government cannot comment on matters pertaining to residence law which lie within the purview of the *Länder*.

21. To the Federal Government's knowledge, are safeguards in place to ensure that singers who are the subject of an entry ban are not granted re-entry, and that France, which issued the visa to Sizzla, will not issue any more visas to these performers?

Taking account of the relevant factors, e.g. the purpose of the visit by the Jamaican citizens in question, who are subject to a visa requirement, the relevant authorities will decide on a case-by-case basis whether measures should be taken to bar their entry to Germany and the Schengen area, and if so, what these measures should be.

22. From which country did Bounty Killer enter Germany following the alert to bar him, and which country issued him with the visa?

The Federal Government has no information about Bounty Killer's movements. Entry and exit data are currently not being collected. The Schengen visa was issued by the French Embassy in Kingston, Jamaica.

23. To the Federal Government's knowledge, what was the background to the exclusion of three gay rights groups from the High-Level Conference, organized by UNAIDS, on 10 June, which according to press reports resulted from pressure from Jamaica, Egypt and Zimbabwe, and why was these countries' request acceded to?

The Federal Government has no information concerning this matter.

24. To the Federal Government's knowledge, which performers signed the Reggae Compassionate Act, and how does the Federal Government view the fact that Sizzla, at least, denies ever having signed the Act?

The artistes Beenie Man, Capleton, Buju Banton and Sizzla (all stage names) signed the Reggae Compassionate Act.

The Federal Government has no information as to whether Sizzla subsequently denies signing the Act.

25. Does the Federal Government have knowledge of violations of the Reggae Compassionate Act, and in the view of the Federal Government, is this type of voluntary commitment adequate?

One weakness of the Reggae Compassionate Act is the monitoring of compliance with this voluntary commitment. An inspector with knowledge of Jamaican patois would therefore need to be present at

concerts to determine with some degree of reliability whether violations are occurring.

26. Which of the persons named in Question 8 are subjects of an alert to ban their entry to the Schengen area, and in which cases does the Federal Government intend to consider such measures?

The Federal Government can confirm that the requisite measures to prevent Sizzla Kalonji from entering the Schengen area have been put in place under Germany's legislation governing foreign nationals. Regrettably, no more information is available about other individuals.