

# JAMAICA

## **Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/JAM/Q/3)**

**Hear the Children's Cry  
Independent Jamaican Council of Human Rights  
Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG)  
Jamaican Community of HIV Positive Women  
Jamaicans for Justice (JFJ)  
Mensana  
Stand up for Jamaica  
Women's Resource and Outreach Centre (WROC)**

*Geneva - Kingston, 20 September 2011*

**COMMENTS FROM  
CIVIL SOCIETY ACTORS IN JAMAICA  
ON THE LIST OF ISSUES**

**REVIEW OF THE FIFTH PERIODIC REPORT OF JAMAICA  
(CCPR/C/JAM/Q/3)  
103<sup>rd</sup> session of the Human Rights Committee  
Geneva – October 2011**

## CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ART. 2)

1. What is the status of the Covenant under domestic law? Can provisions of the Covenant be directly invoked before domestic courts? If so, please provide details on all cases in which this was done and with what results. Please state whether the Charter of Fundamental Rights and Freedoms, which is intended to replace Chapter III of the Constitution, has been enacted and incorporated into the Constitution. Please explain the Covenant rights that are guaranteed in this Charter. Please provide further information with regard to the exceptions to the principle of non-discrimination and how this is implemented.

1. The Charter of Fundamental Rights and Freedoms was given Royal Assent on 8 April 2011. Although the Charter is a step in the right direction, there are many gaps within the provisions that, in our view, require amendment and/or challenge through litigation. Most notably the Charter fails to effectively protect the fundamental rights of all persons of Jamaica, thereby undermining the inherent dignity of all persons.
2. Although the Government claims that most of the provisions of the ICCPR are contained in the Constitution and various pieces of legislation, the Covenant cannot be directly invoked before domestic courts. The legal system in Jamaica follows a dualist tradition, based on the English Common Law system. As such the State would be required to incorporate the Covenant into domestic law in order to give effect to international law contained within the Treaty. Although there is some authority that rules of customary international law may be given effect without ratification under English Common Law principles this principle does not prevail in Jamaica. The Charter of Fundamental Rights and Freedoms now includes socio-economic rights consistent with international conventions<sup>1</sup>, however it does not include a provision for judicial notice to be taken of the international human rights instruments when determining the meaning and effect of the provisions of the Charter. There is no provision within the Charter which requires that the rights protected under the Charter be interpreted in accordance with the Covenant and Human Rights Committee jurisprudence. As such there is no interpretative obligation requiring the Courts to interpret statutory provisions and the common law so as to be compatible with Covenant rights wherever possible and regardless of other interpretations or precedents to the contrary. In addition in many respects the Charter sets out limitations to the promotion and protection of constitutional rights in a manner that is inconsistent with the Covenant. Therefore, the practice of retaining pre-existing laws and lack of interpretative obligation makes the Charter incompatible with the obligations protected under the Covenant (see Annex B for a copy of the Charter of Fundamental Rights and Freedoms).
3. Further, the Charter includes certain provisions that are not in line with the ICCPR and which not only undermine the rights of citizens but in some cases criminalize the exercise of fundamental freedoms. In particular, the Charter: (1) does not oblige judges to consider international human rights instruments when interpreting the Bill; (2) does not include the right to health care, or health facilities; (3) makes protected rights subject to existing laws, by retaining pre-existing forms of punishment that are in breach of constitutional safeguards prohibiting torture and inhuman and degrading punishment<sup>2</sup> such as the death penalty,<sup>3</sup> and flogging; (4) fails to protect from discrimination on the grounds of health status, mental or physical disability, sexual orientation, or language; (5) contains several specific exceptions which fail to consider that new circumstances or societal views may arise in the future. (e.g. Clause 13 (12) preserves existing laws relating to sexual offences, obscene publications or the life of the unborn by stating that these laws do not infringe any rights in the proposed Charter); (6) is not reader friendly: the Bill is drafted in archaic language that is difficult for the layperson to understand and does not conform with more modern constitutions in other jurisdictions.
4. Most pertinently, the State has retained the Death Penalty and has sought to reverse the effect of the Judicial Committee of the Privy Council decision in Pratt and Morgan.<sup>4</sup> This has left the Charter in direct contravention of Article 6 of the ICCPR, which states that the death penalty should be applied to only the most serious of crimes. Currently, the Charter permits the death penalty to be potentially applied to any offence. This essentially leaves prisoners to languish on death row under inhumane and degrading conditions, and leaves little room for recourse (see more in Question 12).
5. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law, but also

<sup>1</sup> See Annex B: Charter of Fundamental Rights and Freedoms

<sup>2</sup> See Section 13(7), Charter of Fundamental Rights and Freedoms

<sup>3</sup> See Section 13(8), Charter of Fundamental Rights and Freedoms

<sup>4</sup> Earl Pratt and Ivan Morgan v. The Attorney General for Jamaica et. al. (2 Nov. 1993). Privy Council Appeal No.10 of 993.

prohibits any discrimination under the law. With the flawed provisions in the Charter of Rights and the failings of the current system of justice (well documented elsewhere), the State is failing to provide equal protection of the law to all persons under Jamaican jurisdiction of Jamaica. It is particularly worrying that the most vulnerable elements of society are the least protected (including also, children, women, and individuals from socio-economically depressed communities).

6. The Government of Jamaica claims in its response that the Charter “aims to guarantee to ‘all persons in Jamaica the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons.’” They further state the aim to guarantee, among other rights, the right to life, liberty and security of person. However, civil society contends that the prevalence of fatal shootings by police is an example of the institutional nature and extent of the Government of Jamaica’s failure to ensure that domestic legislation gives effect to and is compatible with the rights protected under the Covenant. We believe that the unlawful killing of all persons under Jamaican jurisdiction by the police and state violates the victim’s fundamental right to life and security of person. The right to life is further violated when Government agencies fail to properly investigate and prosecute the killings of civilians by police officers and soldiers.
7. Civil society actors, representing victims and families of victims who have experienced human rights violations, have received credible reports of over 300 incidents of human rights abuses by the State during the period 2010-11. Further, NGO’s have noted 275 court appearances during the same period related to fatal shootings by police officers.<sup>5</sup> These numbers reiterate the concern that extrajudicial killing is a serious and on-going concern within Jamaica, and paucity of convictions obtained against serving police officers adds to the extent and magnitude of the concern. Thus, the right to life, a fundamental non-derogable right under the Covenant, is consistently, systematically and disproportionately violated in contravention to the Covenant.
8. Through reports/petitions to the Inter-American Commission on Human Rights (IACHR) civil society actors within this coalition, have sought the intervention of regional human rights instruments in an effort to secure fundamental human rights for all persons under Jamaican jurisdiction of Jamaica. The need for civil society actors, to seek the recourse of international and regional human rights mechanisms to safeguard and promote individual human rights within the jurisdiction is further evidence that the application of domestic legislation is incompatible with the positive obligation on the State to ensure, promote and protect Covenant Rights. In numerous cases before the IACHR, the Commission concluded that the failure of the Government of Jamaica to promote effective remedies protecting covenant rights within the jurisdiction constitutes a violation of human rights within the international humanitarian law context.<sup>6</sup>
9. Finally, the decision of the Government not to adopt a central and publicly available register of detainees is, in our opinion, further evidence of the Government’s failure to adequately incorporate ICCPR provisions within domestic legislation. It has been a practice of law enforcement officials in Jamaica, to utilize the detention of suspects as a means of progressing an investigation. It is also evident that young men in socio-economically depressed communities are disproportionately targeted for processing and thereby detained en mass for questioning, often without reasonable grounds for detention having been established. This is furthered by the increasingly difficulties for advocates and human rights defenders to obtain information on individuals detained.

Recommendations:

- **The State party should:**
  - a.) **Promote and incorporate into domestic legislation, provisions in accordance with the Article 2, Article 14 and 26 of the Covenant, thereby entitling all all persons under Jamaican jurisdiction of Jamaica to the rights elaborated within the Covenant without distinction.**
  - b.) **Amend the Charter of Rights to incorporate protection of rights as enunciated within the Covenant,**

---

<sup>5</sup> Jamaicans for Justice (JFJ) Archives.

<sup>6</sup> See, Michael Gayle IACHR decision on Merits & Admissibility, Braeton Seven, Janice Allen, Shaun Duncan, Jason Smith, Patrick Genius et al. Michael Gayle IACHR Report 92/05Merits October 2005 para. 105 ‘The Commission has observed on many occasions that impunity for violations of fundamental rights, including the rights to life and personal integrity, constitutes one of the principle obstacles to the effectiveness of the rule of law. The brutal manner in which Jamaican security forces treated Michael Gayle in August 1999 is not only inexcusable, but suggests a collective mindset among members of the security forces that they should not and will not be held accountable for their actions that flagrantly violate the most basic rules governing humane treatment and the preservation of life. In the Commission’s view, the tragic circumstances of Mr Gayle’s death starkly illustrates the dangers that arise when states fail on a systematic basis to ensure strict accountability on the part of its own agents for serious human rights violations.’

- thus removing all such provisions currently in conflict with those rights. Specifically:
- i. **Abolish the death penalty;**
  - ii. **Amend current legislation prohibiting abortion;**
  - iii. **Abolish the buggery law, which prohibits consensual sex between adults of the same sex.**
  - iv. **corporal punishment, explain under (b)/ Confessions and torture for example and Extrajudicial Killings – law protecting against?**
- c.) **Enact legislation to allow reference to the ICCPR jurisprudence when interpreting Charter Rights.**
  - d.) **Adopt a law on non-discrimination in accordance with Article 26 of the Covenant.**
  - e.) **Enact legislation to ensure interpretation of statutory provisions and the common law so as to be compatible with Covenant rights.**
  - f.) **Enact legislation specifically prohibiting the use of confessions procured through torture and/or inhuman and degrading treatment.**

2. Please provide information on the availability of remedies for individuals claiming a violation of the rights contained in the Constitution and the Covenant. Provide further information on the obstacles to the effectiveness of existing remedies and the measures taken to address them. Furthermore, the Committee recalls that on 23 October 1997, the Government of Jamaica notified the Secretary-General of the United Nations of its denunciation of the Optional Protocol to the Covenant. Does Jamaica intend to re-accede to the Optional Protocol?

10. The State of Jamaica's response to Question two (2) in the List of Issues states that the "Constitution provides for rights to constitutional redress where rights, which are analogous to the rights in the Covenant, are violated. Any person alleging an infringement of such rights may apply to the Supreme Court for redress." The Government alleges that the right to redress within the Constitutional Courts, as permitted under Chapter III of the Jamaican constitution, has been widened under the current Charter of Fundamental Rights and Freedoms. However, the limitation of the right to redress for violations of fundamental rights to actions before the Constitutional Court [Supreme Court] effectively limited the scope and ability of the individual to allege violations of fundamental human rights before domestic courts.
11. We argue that the State of Jamaica's current interpretation of the right to redress, as being the right to bring a constitutional challenge before the Supreme Court, fails to acknowledge that, pursuant to Section 13 (2) of the Charter, "Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges or infringes those rights." Further, Section 13 (4) of the Charter applies to all law and binds the legislature, the executive and all public authorities. Thus, in our view, the rights of the all persons under Jamaican jurisdiction of Jamaica ought properly to be upheld by all public authorities, meaning that all public authorities including the lower courts have a duty to make decisions in accordance with the Charter. The Supreme Court, being the court of original jurisdiction for constitutional challenges, limits access to justice for all within society given that there is no universal access to legal aid within the jurisdiction. Further, the Charter continues to limit the access of those living within Jamaica, to the protections under the Covenant, by requiring all challenges to regarding violations of Charter rights to be considered within the Supreme Court rather than enacting legislation requiring all courts and tribunals to make decisions which are compatible with rights protected under the Covenant. It cannot be consistent with the Charter or the ICCPR to consider that the appropriate redress ought only to be before the Supreme Court of Jamaica (this is discussed further in Question 22 and highlights how, in particular, the costs of such redress mechanisms are financially prohibitive to most Jamaican all persons under Jamaican jurisdiction). In addition, that the only redress for breach of constitutional rights available after a successful action in the Supreme Court is the award of monetary damages, is we contend an inadequate remedy to discharge the State's obligations under the Covenant.<sup>7</sup>
12. Access to Justice within the jurisdiction particularly in matters before the Supreme Court is limited for the all persons under Jamaican jurisdiction of Jamaica, and is extremely dependent upon the financial resources available to the individual, hence individuals from lower income socio-economic backgrounds have little ability to bring constitutional actions within the Supreme Court in Jamaica, being unable to afford Attorney's fees. While the new Charter of Rights allows Non-Governmental Organisations to make claims on behalf of their clients, in our view the

<sup>7</sup> Applicants seeking Constitutional Redress are only able to be awarded monetary damages for established rights violations. "The general rule is that, where not prohibited by substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that – (a) arises out of; or (b) is related or connected to, the subject matter of an application for an administrative order. In particular the court may award – (a) damages; (b) restitution; or an order for the return of property, to the claimant on a claim for Judicial Review or for relief under the constitution..." Supreme Court of Jamaica Civil Procedure Rules (2002). Part 56.10 (1) and (2).

obligations of the State pursuant to the Covenant are by no means discharged due to the availability of redress by way of applications to the Constitutional Court.

The obligation to investigate, prosecute and punish serious violations of human rights rests with member states, as the entities with the international legal commitment and resources to carry out these functions. To expect Petitioners to assume these responsibilities would not only be inconsistent with the systems jurisprudence, it would also place an inequitable burden on those who generally lack the means and expertise to fulfil these responsibilities.<sup>8</sup>

13. We are disappointed that the Government does not intend to re-accede to the Optional Protocol to the Covenant. In our view, if the State of Jamaica takes its obligations to protect rights guaranteed under the Covenant seriously, we cannot see how it can object to the content of those rights being clarified by way of individual petition. We would reiterate that the right to individual petition under the Protocol is crucial to providing a means of enforcement to individuals in respect of these rights. The Government's current position in our view is evidence of the lack of seriousness with which fundamental human rights are viewed.

Recommendations:

- **The State party should:**
  - a.) **Re-accede to the First Optional Protocol of the ICCPR in order to protect the rights of all persons under Jamaican jurisdiction and allow for individual petitions.**
  - b.) **Adopt the proposals and recommendations of the Justice Reform Task Force<sup>9</sup>, to promote better access to justice for any person under Jamaican jurisdiction of Jamaica, particularly for the most vulnerable within the society and all persons under Jamaican jurisdiction from socio-economically deprived sections of the society.**
  - c.) Expand the legal aid system and undertake public education campaigns to ensure all persons under the jurisdiction of Jamaica (including Internally displaced persons and refugees) are aware of and able to bring a claim to the Supreme Court.
  - d.) **Incorporate relevant provisions within Domestic legislation to promote and protect the fundamental human rights of all persons under Jamaican jurisdiction.**

3. Please provide information on any national institutions, other than the courts, responsible for supervising the implementation of human rights in the State party, as well as on their mandate. Have such institutions been established in accordance with the principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights adopted by General Assembly resolution 48/134 (Paris Principles)? If no such mechanism exists, is there any initiative to introduce one?

14. Despite claims that legislative and institutional steps are being taken to curtail human rights violations, in reality, the government continues to fail to honour its obligations to safeguard and protect the human rights of its all persons under Jamaican jurisdiction. One major shortfall is the governments' ongoing decision not to create a national human rights institution. Despite the Government of Jamaica's response that other government bodies have the responsibility to enhance and promote the protection of human rights, it is submitted that the mandate of organizations such as the Child Development Agency (CDA), INDECOM, the Office of the Public Defender, and the Bureau of Women's Affairs are not consistent with the broad mandate envisaged pursuant to the Paris Principles.

15. Although the Office of the Public Defender is essentially seen as the organization closest to the definition of a national human rights institution, its mandate and capacity (it is comprised of one (1) public defender and a small support staff) would not, in the context of the provisions of the Paris Principles, satisfy the framework, scope and competence of a national human rights institution.<sup>10</sup> Pursuant to Section 13 (1)(a)(ii) of the *Public Defender (Interim Provisions) Act*, "the Public Defender shall investigate any action taken where he is of the opinion that any person or body of persons has suffered, is suffering or is likely to suffer an infringement of his constitutional rights as a result of any action taken by an authority or an officer or member of that authority." The Public Defender is, thus, authorized to investigate maladministration by public authorities after which, the following recommendations may be made to an officer of the public authority under investigation: (a) that the action which was the subject

<sup>8</sup> Inter-American Commission on Human Rights (IACHR). (20 Feb 2003). Michael Gayle Report 8/03.

<sup>9</sup> Jamaican Justice System Reform Task Force. (June 2007). Final Report. See Annex C.

<sup>10</sup> Jamaica Gleaner. (18 April 2010). Public Defender Cleans House. Available via <http://jamaica-gleaner.com/gleaner/20100418/lead/lead5.html>

matter of the complaint be reviewed; (b) the alteration of an enactment, rule or regulation which causes or may cause injustice or infringement of constitutional rights; (c) that compensation be made to the complainant. Where recommendations are not complied with, the Public Defender shall submit a special report to Parliament. Although the new Charter provides that “all persons are under a responsibility to respect and uphold the rights of others recognized in the charter,” aside from the courts, there is no recourse available to those whose rights have been violated by private actors.

16. Although we welcome the implementation of the Independent Commission of Investigations (INDECOM), which began operations on 16 August 2010, the volume of complaints of abuse received at the hands of State Agents, notably the Jamaican Constabulary Force (JCF) and Jamaica Defence Force (JDF), have continued to be disproportionately high despite the fall in the numbers of reported violent crimes asserted by the Government.
17. It is too early to assess the overall effectiveness of INDECOM, however, on the experience thus far there is a marked improvement in the manner and seriousness in which individual complainants and complaints of abuse are now being treated, as a result of the more robust legislative authority that INDECOM are given under the Act.<sup>11</sup> INDECOM has also been provided with resources from Parliament to employ investigators, a process which has only recently concluded. However, since INDECOM commenced their investigatory procedures, it has been evident that their powers to adequately and effectively ensure accountability of police officers alleged to have violated the rights of persons has been hampered by a lack of cooperation between INDECOM and the Director of Public Prosecutions (DPP).<sup>12</sup>
18. While the CDA is mandated to develop comprehensive strategies, policies and programmes to promote the rights and well-being of children, it does not have a recourse mechanism to address rights violations. In respect to the Bureau of Women’s Affairs, while it is an important institution advancing the rights of women, it provides no recourse mechanism for rights violations.
19. In addition to the above mentioned concerns, the rights of many other groups such as persons working in the private sector, members of the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community, and persons living with disabilities are left entirely excluded. Without a formal national human rights institution, the depth and breadth of human rights advancements will continue to be limited. By not having one central organization working toward the advancement and strengthening of human rights, the Jamaican government affirms the second-class placement of human rights issues.
20. While the government cites the Paris Principles in their response to the List of Issues, we believe it is inconsistent with the provisions of the United Nations General Assembly resolution 48/134 on the Paris Principles for the Government to claim that it supports the resolution whilst having no initiative in place to implement it. This is particularly unacceptable given the prevalence of human rights abuse in Jamaica.
21. In our view, it is imperative that the Government of Jamaica establish a national human rights institution (NHRI) in conformity with the Paris Principles to allow independent and impartial “competence to protect and promote human rights.”<sup>13</sup> If an NHRI is established in accordance with the resolution, all persons under Jamaican jurisdiction would be provided with a more effective framework through which to make complaints, reports and challenges to the Government of Jamaica in accordance with the ICCPR and international legal obligations.

Recommendations:

- **The State party should:**
  - a.) **Establish a national human rights institution to oversee the implementation, monitoring, and enforcement of human rights, which provide the necessary powers to prosecute human rights abuses, in accordance with the Paris Principles.**
  - b.) **Provide a national human rights institution with the necessary, competence, power and independence to promote and protect human rights at all levels of Jamaican society.**
  - c.) **Strengthen the power and independence of the Office of the Public Defender to ensure it is able to hold the government accountable in situations where the Public Defender’s investigations conclude**

---

<sup>11</sup> Section 8 (4) INDECOM Act ‘employees be able to function in an independent, impartial and objective manner and without unduly close association with any Security Forces or public body likely to be the subject of investigation under this Act.’

<sup>12</sup> Parliament moves to quell ODPP, INDECOM conflict. (3 June 2011). Jamaica Observer.

[http://www.jamaicaobserver.com/news/Parliament-moves-to-quell-ODPP--INDECOM-conflict\\_8949848](http://www.jamaicaobserver.com/news/Parliament-moves-to-quell-ODPP--INDECOM-conflict_8949848)

<sup>13</sup> Paris Principles Adopted by General Assembly resolution 48/134 of 20 December 1993.

a violation of human rights have occurred.

## NON-DISCRIMINATION, AND EQUAL RIGHT OF MEN AND WOMEN (ART. 2(1), 3, AND 26)

4. Please indicate the legislative and administrative measures and recent court decisions, if any, relating to protection against discrimination in all fields, on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

22. Pursuant to Art 13(3)(i) of the Charter of Fundamental Rights and Freedoms, the right to freedom from discrimination is expressed on the grounds of: (i) Being male or female; (ii) Race, place of origin, social class, colour, religion or political opinions. There is no general inclusive clause that takes into account any other grounds for discrimination. In our view, the categorisation of the right to freedom from discrimination, as stated in the Government's response, fails to protect the rights of all persons under Jamaican jurisdiction, particularly in regard to the protection from discrimination on the basis of sexual orientation and disability. This is particularly felt by members of the LGBTI community, the mentally ill, those living with HIV/AIDS, members and residents of depressed socio-economic communities, and persons with disabilities.
23. As enacted by Parliament the Charter of Fundamental Rights and Freedoms entrenches discrimination against same sex relationships and effectively reinforces the criminalization of sexual activities between consenting adults of the same sex. This forms the foundation of many violent and discriminatory acts against LGBTI persons (see more in Question 6).
24. The current Charter also provides no provision to protect against discrimination on the grounds of disability. According to the Statistical Institute of Jamaica (STATIN) (2001), there are 163,206 persons (6.3%) living with a disability over the age of five years in Jamaica, of which 36,088 are male and 127,118 are female. With women reporting 3.5 times more disabilities than men, they also experience a higher level of exclusion due to their gender coupled with their disability. Issues not adequately covered by the Charter in respect to disability include: underemployment; low remuneration; poor working conditions; exploitation, discrimination, and violation of rights; lack of representation and dialogue; lack of work security and professional mobility; lack of access (physical, technological, and informational); and lack of social security provisions. Further, the Government has taken no action or instituted any program to assist persons with disabilities to gain access to the workplace (including assisting in their mobility).
25. Children are also affected by the lack of protection against discrimination on the basis of disability. UNICEF (2006) numbers 37,000 Jamaican children living with one or more forms of disability including sight, hearing, speech, physical disability, mental retardation and learning disability.<sup>14</sup> While the majority of these children are school-aged (5-14yrs), only about 10% attend formal classes.<sup>15</sup> This has lifelong effects on the ability of children to adequately provide for themselves once they reach adulthood.
26. The definition used to describe persons with a disability is an important factor in the discrimination experienced by these individuals. The *National Policy for Persons with Disabilities* defines a disability as, "any restriction or lack of ability to perform an activity in the manner or the range considered normal for a human being. Such restriction or lack of ability must be as a result of impairment." This definition is severely lacking, and we call upon the Jamaican government to implement a definition that is much more inclusive, such as the definition used in the UN Convention on the Rights of Persons with Disabilities: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."
27. Persons residing in Jamaica, especially those residing in socio-economically depressed inner-city communities face discrimination on a daily basis, are routinely denied access to basic human rights, and are limited in their ability to seek just recourse. The ability of men, in particular, to have their right to life protected is continuously called into question as they are the overwhelming majority of those who are victims of arbitrary extrajudicial killings by Jamaican police. In 2010, these amounted to 320 deaths at the hands of police (not including the 73 killed during the State of Emergency), of which represents 20% of the number of persons killed in Jamaica. This not only victimizes men, it increases the already heavy burden of childcare and subsistence on the many women left behind.

<sup>14</sup> UNICEF. (2006). *Situation Analysis on Excluded Children in Jamaica*. [http://www.unicef.org/jamaica/resources\\_3950.htm](http://www.unicef.org/jamaica/resources_3950.htm)

<sup>15</sup> *Ibid.*



(For more information on the discrimination faced by low-income Jamaicans at the hands of the Police, please refer to Annex A).

28. Individuals with HIV/AIDS also face discrimination due to the common misperception linking the disease to homosexuality. This causes many affected individuals to either avoid treating their illness or face serious repercussions in the community. There are no laws protecting individuals with HIV/AIDS from discrimination. NGO's have received credible reports of severe stigma and discrimination against adults and children living with HIV/AIDS. Despite the Ministry of Labour's implementation of a program to reduce the stigma relating to HIV/AIDS in the workplace, there have been reports that healthcare workers often neglected patients with HIV/AIDS.<sup>16</sup> This is exacerbated by the lack of a policy to ensure confidentiality of health care professionals to HIV/AIDS patients.<sup>17</sup> Individuals living with HIV/AIDS suffered the added stigma of being categorised by society as homosexual, in a society that continues to criminalize homosexuality. There were also credible reports of inmates living with HIV/AIDS not receiving adequate healthcare due to stigma whilst incarcerated.
29. Equality and non-discrimination are two of the most important precepts of human rights. The Government of Jamaica should adopt and incorporate legislation that safeguards the rights of all persons under Jamaican jurisdiction and protects them from discrimination on any premise. The Jamaican Government must adopt a law on non-discrimination in order to ensure the rights of ALL persons under Jamaican jurisdiction are considered.

Recommendations:

- **The State party should:**
  - a.) **Develop and enact a law on non-discrimination incorporating provisions formulated in accordance with Article 2, 14, and 26 of the Covenant, and pursuant to the Universal Declaration of Human Rights<sup>18</sup> that takes into consideration the special situation of persons living with HIV/AIDS, disabled people and people discriminated because of their sexual orientation;**
  - b.) **Adopt, at the national level, a more inclusive and comprehensive definition of disability as outlined in the UN Convention on the Rights of Persons with Disabilities.**
  - c.) **Enact domestic legislation prohibiting discrimination against persons with disabilities, in health care, employment and education mandating accessibility for persons with disabilities;**
  - d.) **Enact the National Disabilities Act in collaboration with civil society.**
  - e.) **Develop and enact legislation prohibiting the discrimination of individuals by reason of their HIV/AIDS health status.**
  - f.) **Develop and enact legislation prohibiting discrimination on other grounds to ensure adequate protection to all living in Jamaica.**

5. Please provide information on the implementation of the National Gender Policy and its impact in improving the status of women. Please provide information on (a) women's status in the political, economic and social life of the country, (b) levels of employment among women, the proportion of women in positions of responsibility both in the private and public sector, (c) whether women and men receive equal pay for equal work, and (e) the literacy and school enrolment rates for women as compared to those of men. Indicate all legislative and other steps taken to eliminate the persistent patriarchal attitudes and deep rooted stereotypes in society and in school textbooks, and measures to put an end to acts of discrimination, both in the public and private sectors, which impair the equal enjoyment of rights by women and men.

30. The Government of Jamaica launched the Jamaica National Policy for Gender Equality (NPGE) on March 8, 2011. The policy aims to "reduce all forms of gendered discrimination and promote greater gender equality and social justice." While the implementation of this policy is a step in the right direction, it still remains that women and children are the poorest and most vulnerable section of the population.
31. Women comprise 43.2% of the labour force and are concentrated in the lowest paying sectors of the economy. Unemployment among women is almost two times that of men. Females in the 14-24 age range have an unemployment rate of 33.6%, as opposed to 19.8% for males in the same age category.<sup>19</sup> Female headed

<sup>16</sup> US State Department Report. ( 2010). p. 23.

<sup>17</sup> J-FLAG. (2011).

<sup>18</sup> Art. 2, Universal Declaration of Human Rights . GA Res. 217A.

<sup>19</sup> Economic and Social Survey of Jamaica. (2009).

households are larger and consume 17% less than male headed households.<sup>20</sup> Most of the thousands of female household workers are among the working poor, earning a minimum wage of JA\$4500/week (approximately US\$52/week) and are without any form of social protection such as health insurance or support of labour unions.

32. Women continue to face more challenges than men in respect to credit, real estate and other property issues. For example, women only occupy 20% of agricultural lands and continue to face discrimination in agricultural work due to it still being considered a “man's domain.” As such, rural women and their families are among the poorest segment of the population, and female agricultural workers often face inhumane working conditions.<sup>21</sup> The disadvantage faced by women has been noted by the Rural Agricultural Development Authority, who found that the roles of women in the agricultural industry are gender specific and result in women earning lower wages than men.
33. Research conducted by WROC in collaboration with CIDA (2008) showed that while women have made significant strides in educational and professional development, they only comprise 16% of members of private sector boards and 33% of public sector boards. While the Employment (Equal Pay for Men and Women) Act (EPMWA)<sup>22</sup> is an important step in the attainment of equality between women and men, current practices continues to be at odds with the policy. For example, women working in higher income brackets continue to receive lower wages than their male counterparts despite the fact that they have comparable or higher levels of education levels.<sup>23</sup>
34. Women are also disproportionately disadvantaged in health matters. The male to female infection ratio for HIV/AIDS in the 10-19 age group is 1: 2.84, which is largely due to the fact that women are not sufficiently empowered to negotiate safe sex. Further, some 35.3% of rural households use only untreated water sources (JSLC 2009), experience poor sanitation, and women spend hours walking long distances to secure potable water.

Recommendations:

- **The State party should:**
  - a.) **Incorporate the principle of equality between women and men in the domestic legal system and adopt appropriate laws prohibiting discrimination against women;**
  - b.) **Provide effective forms of redress for women victims of discrimination by establishing tribunals and other public institutions to ensure the effective protection of women against discrimination; and**
  - c.) **Ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.**
  - d.) **Clearly outline and inform the public on an implementation timetable and plan, and strengthen the framework for the effective implementation of the NPGE.**
  - e.) **Establish an oversight/advisory committee for the implementation of the NPGE and include Jamaican women’s organizations.**
  - f.) **Review and revise the Charter of Fundamental Rights and Freedoms using a gender perspective.**
  - g.) **Undertake the necessary research of the Jamaican electoral process in order to make the necessary constitutional and legal changes to advance women’s participation in the political process.**

6. According to information before the Committee, homosexuals are subjected to discrimination and ill-treatment in the State party. Please indicate whether you intend to revise the definition of discrimination adopted by the Charter of Fundamental Rights and Freedoms, to include gender identity and sexual orientation as illegitimate grounds for discrimination. Furthermore, the Offences against the Person Act criminalises consensual sexual activity between persons of the same sex, and these acts are punishable by imprisonment of up to 10 years. Please provide information on the number of cases, if any, in which this provision has been applied, and if there are any steps taken to decriminalize same sex relationships.

35. We were very concerned to note the government’s brief response to Question six (6), which thinly conceals its blatant disregard for the rights of LGBTI persons. This is mirrored its response during the Universal Periodic Review, which out rightly rejected recommendations to offer legal protection against discrimination based on sexual orientation.<sup>24</sup> Their short statement in the List of Issues further fails to consider the extent to which LGBTI

<sup>20</sup> Survey of Living Conditions (SLC). (2009).

<sup>21</sup> Women’s Resource & Outreach Centre (WROC). (2011).

<sup>22</sup> Enacted 1 December 1975.

<sup>23</sup> Women’s Resource & Outreach Centre (WROC). (2011).

<sup>24</sup> See paragraphs 101.18 to 101.25. In, Report of the Working Group on the Universal Periodic Review – Jamaica. (4 Jan 2011).

A/HRC/16/14. See also: page 6, paragraph (p). In, Report of the Working Group on the Universal Periodic Review – Jamaica

persons are inadequately protected under existing legislative provisions.

36. Rather than guaranteeing the rights of all persons living in Jamaica, the newly enacted Charter of Fundamental Rights and Freedoms actually ensures the continued discrimination of certain groups of peoples, especially those belonging to the LGBTI community. It discriminates against same sex relationships and effectively reinforces the criminalization of sexual activities between consenting adults of the same sex by: (a) preserving existing laws that do not recognise same sex unions and explicitly states that these relationships cannot be legally recognised [Clause 18]; (b) withholding the right to freedom from discrimination on the grounds of sexual orientation; and, (c) providing the right of persons to communicate with family, spouse, and others while they are detained or arrested, but excluding same sex partners and common law unions [Clause 14(2)].
37. The Charter also deliberately retains the “buggery law,” which criminalizes sexual relations between consenting adults of the same sex. Sections 76 and 77 of the *Offences Against the Person Act* criminalize acts of heterosexual and homosexual buggery:

Section 76: Whosoever shall be convicted of the abominable crime of buggery, 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: Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

This violates the right of homosexual men to equality before the law and is thus incompatible with Article 2, Article 26, Article 16, and Article 17 of the Covenant. Persons who categorise themselves as belonging to the LGBTI social group are therefore not only discriminated against as a result of the attitudes of society, but face legally institutionalised discrimination within the jurisdiction. People who violate the rights of LGBTI Jamaicans feel their actions are justified because the society creates an enabling context for such human rights violations. Many use the buggery and gross indecency laws as their justification. This has been further supported by the Jamaican Parliament in the Charter of Fundamental Rights and Freedoms.

38. Further, the Government effectively disallows any discussion to repeal any laws that discriminate against homosexuals by entrenching the provisions that prohibit discrimination within the jurisdiction on very limited grounds namely by reason of being male or female as opposed to recognizing discrimination by reason of sexual orientation.
39. Statements made by politicians and Senior Police Officers reinforce the environment of discrimination. Prime Minister Golding was recorded stating, “I make no apology in saying decisively and emphatically that the government of Jamaica remains irrevocably opposed to the recognition, legitimization or acceptance of same-sex marriages or same-sex unions.” He went on to say, “there is the possibility that sometime in the future parliament could pass a law that says same-sex unions are legal but it won’t be done in this parliament. Not as long as I sit here.”<sup>25</sup>
40. In comments made to the media, Senior Superintendent Fitz Bailey demonstrated the pervasiveness of discriminatory thinking and unacceptable labelling of homosexuals by stating that homosexuals were the largest perpetrators of organized crime in Jamaica despite there being no factual evidence to support this statement.<sup>26</sup> Although his remarks were later withdrawn by the Jamaican Constabulary Force (JCF), both his and the Prime Minister’s remarks speak to the on-going bias and discrimination faced by the LGBTI community everyday.
41. The continued violation of the LGBTI rights of persons within Jamaican jurisdiction has the consequential affect of preventing the implementation of policies to address those living with HIV/AIDS who are homosexual. Further, the criminalization of consensual sexual activity prevents individuals from freely seeking health care (including HIV prevention), seeking legal advice and/or protection as a result of such discrimination, and leads to verbal and

---

(Addendum). (11 March 2011). A/HRC/16/14/Add.1.

<sup>25</sup> AFP. (13 Oct. 2009). Jamaican PM: new constitution should ban gay marriage.

[http://www.google.com/hostednews/afp/article/ALeqM5gafp\\_36F8DXL5k7TIMo-qNzvpavw](http://www.google.com/hostednews/afp/article/ALeqM5gafp_36F8DXL5k7TIMo-qNzvpavw)

<sup>26</sup> Comments made by Senior Superintendent Fitz Bailey on TV Jamaica's Prime Time News. (11 July 2011).

physical assaults, displacement from home and employment, sexual violence, and extortion, among others (see Question 6 in Annex A for case examples).

42. In 2004 and 2010, the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG) lobbied unsuccessfully for the inclusion of sexual orientation as illegitimate grounds for discrimination in the Charter of Fundamental Rights & Freedoms. Between January 2009 and June 2011, J-FLAG recorded 129 incidents in which the human rights of LGBTI persons were violated.<sup>27</sup> The majority of cases were perpetrated against men who made 47 reports in 2011, 38 in 2010, and 22 in 2009.<sup>28</sup>
43. Females are seemingly at less risk of homophobic discrimination and/or violation, however when discovered can face severe repercussions (discussed more below). These violations are often termed as “punishment” for their “illegal” activities. The result is that lesbians are raped in extremely violent ways and their genitals mutilated, mirroring the practice of corrective rape of women experienced in some areas of Africa. There were four incidents perpetrated against females in 2011, nine in 2010 and four in 2009 (read about some of these cases in Annex A - Question 6).
44. The situation facing LGBTI persons has become so acute that cases are being heard for asylum abroad. For instance, the United Kingdom Asylum and Immigration Tribunal recently decided that an applicant, from Jamaica, had established a “well-founded fear” of persecution contrary Article 3 of the Refugee Convention. It was accepted that “the appellant [had] established a risk of persecution and...The respondent (UK government legal representative) accepted that there was insufficient protection in Jamaica for lesbians who could establish that they were at real risk of persecution or serious harm.”<sup>29</sup>
45. We would add that social stigma in Jamaica pervades other sections of society, such as communities that are socio-economically deprived. The all persons under Jamaican jurisdiction of these communities are disproportionately the victims of arbitrary laws and excessive use of force and experience discrimination, abuse, and violation of human rights. In the same way that the LGBTI social group have no sufficient protection when raising complaints related to abuse by police, the culture of abuse experienced by persons in Jamaica renders many vulnerable people victims of a system that fails to protect.

Recommendations:

- **The State party should:**
  - a.) **Immediately repeal the buggery law and add the text “non-consensual sex” to the existing text in Section 76 of the Offences Against the Person Act.**
  - b.) **Adopt a law on non-discrimination incorporating provisions formulated in accordance with Article 26. Repealing such laws as constitute undue interference with fundamental rights protected under the Covenant.**
  - c.) **Accept and adopt the recommendations arising from the Universal Periodic Review to:**
    - i. **Decriminalize sexual activity between consenting adults of the same sex, and address hate crimes on the grounds of sexual orientation and gender identity as a matter of urgency;**
    - ii. **Include in the Charter of Fundamental Rights and Freedoms, a specific prohibition of discrimination on the grounds of sexual orientation;**
    - iii. **Combat discrimination on the grounds of sexual orientation through awareness-raising campaigns and education programs in the schools;**
    - iv. **Immediately repeal all legal provisions constituting discrimination against individuals on the basis of their sexual orientation or gender identity.**

#### **STATE OF EMERGENCY (ART.4)**

7. According to information before the Committee, on 23 May 2010, the Governor-General of Jamaica issued a proclamation declaring a state of public emergency following the civil unrest after the Prime Minister announced the government’s intention to authorize the extradition of Michael Christopher Cooke (Dudus) to the United States of America. Please comment on reports that during the state of emergency at least 73 people were killed by agents of the State, and 4, 000 were detained. Please explain the measures that have been taken, if any, to investigate the cause of

<sup>27</sup> J-FLAG archives.

<sup>28</sup> Ibid.

<sup>29</sup> SW (Lesbians – HJ and HT Applied) Jamaica CG [2011] UKUT 00251 (IAC). Asylum and Immigration Tribunal UK.

the deaths and prosecute the alleged perpetrators. Furthermore, please indicate the extent to which Covenant rights could be derogated from under national law and how this is in line with the provisions of the Covenant.

46. The Public Defender of Jamaica has undertaken the investigations into the deaths that occurred during the State of Emergency.<sup>30</sup> This investigation has involved collecting statements, assisting in the identification of bodies, providing international observers at the post mortems (who have submitted reports to that office), providing expert analysis of some of the scenes of the deaths, and collating other investigation data. The Public Defender has stated publicly that he expects to have all the relevant results available to him by August 2011 (although the report has not yet been released).<sup>31</sup> A request to INDECOM in July 2011 to report on the progress of their investigations into the May 2010 Tivoli incursion was met with a response stating it was too early to make any reports
47. Although the Public Defender and Civil Society have demanded a Public Commission of Enquiry into the deaths that occurred during the State of Emergency and into the conduct of the security forces during the incursion into Tivoli and surrounding communities, to date, the Government of Jamaica has not seen fit to commit to the establishment of such a Commission. Nor has it suggested or instituted any alternative procedures for arriving at the truths of the deaths of so many people, or even the correct accounting of those deaths.
48. It is interesting to note in the State response to the List of Issues, that the results of investigations into security forces involved in extrajudicial killings will be sent to the DPP. However, according to the new law on INDECOM this information should be sent to INDECOM. This further reinforces the ongoing power struggle over who should be handling police inquiries, especially those as sensitive as inquiries into police misconduct. There is a dire need for the necessary political will to insist on the uncomfortable transition to INDECOM (for more information related to the derogation of rights, please refer to question one (1)).

Recommendations:

- **The State party should:**
  - a.) **Provide INDECOM with sufficient powers, funds, and resources to adequately investigate all form of police misconduct.**
  - b.) **Establish a public inquiry into the events surrounding the State of Emergency in 2010, in accordance with recommendations arising from the Universal Periodic Review.**

## RIGHT TO LIFE (ART.6)

8. According to information before the Committee, a total of 253 people were killed at the hands of the Police in 2009. Please comment on this allegation.

49. Official statistics for police fatal shootings reported from January 1, 2010 to December 31, 2010 showed a total of 320 fatal shootings.<sup>32</sup> Although the same official statistics show a 7% reduction in all major crimes in 2010,<sup>33</sup> there was an almost 20% increase recorded over the police fatal shooting statistics for 2009, which the State reported in their response as 263. The official number of fatal shootings reported by the police in 2010, does not include the (at least) 73 persons killed during the State of Emergency and the three persons who are still missing and who were last seen in the company of the security forces.<sup>34</sup>
50. It is even more alarming to note that the current level of homicides in Jamaica, including police killings, surpasses the civil war benchmark of 30 in 100, 000.<sup>35</sup> According to a study conducted by Dr. Herbert Gayle, Jamaica's

<sup>30</sup> Witter Laments Human Rights Abuses . (31 Jan 2011). Jamaica Gleaner. <http://jamaica-gleaner.com/gleaner/20110131/lead/lead7.html>

<sup>31</sup> Tivoli Enquiry hinges on Witter's Report. (24 Feb. 2010). The Jamaica Gleaner. <http://jamaica-gleaner.com/gleaner/20110224/news/news3.html>

<sup>32</sup> Jamaica Constabulary Force Major Crime Review for Period 01 January 2010 to 31 December 2010 prepared by the Jamaica Constabulary Force.

<sup>33</sup> Ibid; JCF Stats Analysis. (2010). All Major Crimes Down By 7 % In 2010

<sup>34</sup> Jamaica Observer. (9 Nov. 2010). Three boys missing from Tivoli incursion. Available via [http://www.jamaicaobserver.com/columns/Three-boys-missing-from-Tivoli-incursion\\_8133355](http://www.jamaicaobserver.com/columns/Three-boys-missing-from-Tivoli-incursion_8133355)

<sup>35</sup> Police fear crime too: Research data suggests local cops psychologically locked in a war ready state. (12 June 2011). The Jamaica Observer. [http://www.jamaicaobserver.com/news/Police-fear-crime-too\\_8995969](http://www.jamaicaobserver.com/news/Police-fear-crime-too_8995969)

homicide rate stood at 62 in 100, 000 in 2009.<sup>36</sup> This is extremely telling of the continuous level of violence experienced by Jamaicans in their everyday life.

51. One of the principal factors that, in our opinion, have motivated the surge in unlawful police killings is the persistence of impunity, which has traditionally protected perpetrators from prosecution in the vast majority of such cases. This impunity coupled with the government's 'get tough on crime' agenda, has led to the significant increase in the number of persons killed by the security forces.
52. The issue of impunity was particularly noted by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions during his visit between 12-21 February 2010:

The Special Rapporteur has noted that impunity continues to be the principal cause of the perpetuation of human rights violations, and particularly of extrajudicial, summary or arbitrary executions. It is the obligation of Governments to carry out exhaustive and impartial investigations into all allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, and to take effective measures to avoid recurrence of such violations.<sup>37, 38</sup>

53. The fact is there have been 3514 persons killed at the hands of police since 1991.<sup>39</sup> It is submitted that the impression of impunity, pervasive in circumstances where it is extremely difficult to obtain a conviction against police officers, undermines the effectiveness and impartiality of the police as state agents. The minuscule number of police shooting cases involving fatalities or injuries that actually make it to the criminal courts – less than 10% of the total since 1999 – is testimony to the obstacles to accountability that persist. In all that time, there have been only four convictions for murder or manslaughter of a police officer.<sup>40</sup>
54. The long delays that exist in obtaining rulings from the DPP on matters where the police have been involved in fatal shootings also undermine the public perception that there is no justice for police killings. We would submit that, given the gravity of the problem of extrajudicial killing by state agents in Jamaica, it is imperative that the DPP act expeditiously to ensure the accountability of state agents who are alleged to have violated fundamental rights of persons residing in Jamaica, most specifically where a violation of the right to life has occurred.

Recommendations:

- **The State party should:**
  - a.) **Ensure exhaustive, effective, thorough investigations are carried out into allegations of violations of the right to life perpetrated by state agents;**
  - b.) **All officers alleged to have been involved in incidents/allegations of excessive use of force violating the right to life of any citizen shall be subject to disciplinary and/or criminal sanctions forthwith and removed from front line duty pending the outcome of an impartial investigation.**
  - c.) **Take immediate action to ensure the DPP responds in a timely manner on matters relating to officers alleged to have been involved in incidents/allegations of excessive use of force violating the right to life.**

9. Please explain the measures taken, if any, to ensure that the new Independent Commission of Investigations

<sup>36</sup> Ibid.

<sup>37</sup> UN Office of the High Commissioner for Human Rights. (Oct. 1997). *Fact Sheet No. 11 (Rev.1), Extrajudicial, Summary or Arbitrary Executions*. No. 11 (Rev.1). available via <http://www.unhcr.org/refworld/docid/479da6e02.html>

<sup>38</sup> In this connection, the Special Rapporteur draws on principles 9 to 19 of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions and principle 7 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. See also, the Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (United Nations publication, Sales No. E.91.IV.1) and the Guidelines for the conduct of United Nations inquiries into allegations of massacres (United Nations Office of Legal Affairs, 1995).

<sup>39</sup> This number is derived from two sources. (1) UN Economic & Social Council – Commission on Human Rights. (26 Sept. 2003). *Report of the Special Rapporteur, Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2000/53: Addendum – Mission to Jamaica*. The report cites data from the Jamaica Constabulary Force (JCF) that between 1991 and 1999 there were 1249 persons killed by police. (2) Bureau of Special Investigations. 2000-2010. Number of persons killed by the police was 2265. A significant increase from the previous decade.

<sup>40</sup> Two particularly notable cases of police shootings causing death that took place in 2010 are the cases of Frederick "Mickey" Hill and Ian "Chin-Sing" Lloyd. Both cases caused outraged both locally and internationally. Read about their cases in Question 8 of Annex A.

established to replace the Bureau of Special Investigations (BSI) and the Police Public Complaints Authority (PPCA), that were mandated to investigate cases of police violence and killings, is independent and provided with sufficient resources to carry out its mandate. Please provide data on the number of police officers that have been (a) investigated for extra-judicial killings, including the number of inquests conducted and completed; (b) prosecuted (c) acquitted (d) convicted (e) sanctioned, and the nature of those sanctions.

55. Further to our response in Question three (3), although INDECOM has received 'sufficient' resources for staffing, and the leadership of the organization has shown strong commitment to carrying out the legislative mandate problems have arisen in the question of who (DPP or INDECOM) has the power to charge policemen for the commission of offences. The Government has acknowledged that it may need to clarify (and strengthen) the powers granted INDECOM under the Independent Commission of Investigations Act. Many of the newly employed Investigators will need training in order to carry out effective investigations and it will require strong leadership from INDECOM to overcome the challenge of Police personnel tampering with and contaminating crime scenes. Additionally, challenges of getting timely forensic and ballistics reports will continue to impede speedy and effective investigations by INDECOM.
56. Even where INDECOM is adequately resourced, and investigations effectively carried out the prosecutions of police officers alleged to have used excessive force violating the right to life of persons under Jamaican jurisdiction will remain challenging. Our experience has shown that such prosecutions are fraught with witness intimidation and coercion and have resulted in a poor rate of convictions. In the cases of which we are aware, it has been evident that the current legal system is not adequately equipped to deal justly and sensitively with situations where witnesses are intimidated by State Agents.
57. In addition, the family members of those killed by state agents experience excruciating delays in receiving justice. Too often the case files are sent by the DPP for consideration before the Coroners Court.<sup>41</sup> In our experience, matters can take years to proceed through the Coroners Court only to conclude with a finding that the matter ought to proceed to Circuit Court. Matters subsequently commenced at the Circuit Court (criminal court), as much as ten years after the incident has occurred, face severe difficulties in securing witnesses to attend court to establish the criminal liability of the police officers involved.
58. Thus, despite the high rate of extrajudicial killing that occurs within the jurisdiction it is evident that police officers in Jamaica engaging in excessive use of force (resulting in a violation of the right to life contrary to domestic and international legislation) are rarely held accountable for their excesses. This is alarming given that there are credible reports of senior police officers admitting to extra-judicial killings with the belief that their actions are justified during forensic polygraph examinations.<sup>42</sup>
59. The failure of the Government of Jamaica to ensure that the people living in Jamaica have an effective remedy against the abuse of power and excessive use of force that prevails amongst police officers in this society is unacceptable. Specifically, the failure of the DPP to bring charges against the majority of police officers involved in the killing of Jamaican civilians speaks to issues of accountability. The right to life is a fundamental right protected under the provisions of the Covenant, it is imperative that the lack of accountability and impunity which exists in Jamaica is addressed, through the implementation of the provisions of the Covenant in domestic legislation. Further, the current excessively high rate of extrajudicial killing in the jurisdiction of Jamaica is undoubtedly evidence that the State of Jamaica is consistently failing to protect and promote the most fundamental right under the Covenant, the right to life.

Recommendations:

- **The State party should:**
  - a.) **Ensure the effective, impartial and thorough investigation of allegations of excessive use of force;**
  - b.) **Ensure officers and state agents, found to have used excessive force in violation of the right to life Art.6, are held accountable for their actions and punished to the fullest extent of the law.**
  - c.) **Take immediate action to prosecute officers and state agents involved in questionable fatal shooting of civilians and implement a policy to ensure proper accountability for the prosecution of officers and state agents found to be in violation of the right to life, and inhuman and degrading treatment (Articles 6 and 7), within two (2) years of this review.**

<sup>41</sup> The Coroner's Court is a statutory inquest/inquiry to determine when, how, and by what means the person came to his/her death.

<sup>42</sup> <http://www.wikileaks.org/cable/2009/03/09KINGSTON208.html>

10. According to information before the Committee, well-armed criminal gangs that deal in trafficking of narcotics and guns are also responsible for much of the violence that leads to deaths in ‘inner city’ and ‘garrison’ communities. Please provide information on the measures taken to deal with the violence between gangs that leads to deaths. Please provide information on the measures taken, if any, to (a) disband these gangs, (b) disarm them, and (c) prosecute and punish all perpetrators.

60. As per the Government’s response, with the situation leading up to State of Emergency and what appears to have been an agreement between all political players that it is time to “get tough on crime,” the Government in 2010, introduced and enacted six crime bills.

61. JFJ made submissions to Parliament on each of the enactments outlined in the State reply to the List of Issues (see paragraph 69).<sup>43</sup> JFJ was particularly concerned that rather than focusing on preventative measures, the Anti-Crime Acts focus on crimes that have already been committed and seem intent on correcting perceived or existing flaws in the operations of the police, the courts, and the correctional services. We believe that putting further power into the hands of the Jamaica Constabulary Force (JCF) (an organization accused of endemic corruption and of institutional bias against the rights of those Jamaicans of a lower socio-economic status) by removing existing safeguards and constitutional and legislative restraints, runs the demonstrated risk of greater opportunities for corruption and further destruction of the Police’s ability to “govern security...in ways that ensure human rights are protected.”<sup>44</sup>

62. The enactment of legislation such as the Crime Bills<sup>45</sup> which for the most part seek to interfere and limit the protected covenant rights of all persons under Jamaican jurisdiction, are examples of the means by which the government has gradually reduced the ability of persons to evoke those rights as espoused within the covenant.

63. Apart from the problems inherent in the ‘Crime Bills’ approach to policing the presumption of innocence has been called into question by the “Person of Interest” policy that has been adopted by the JCF over the past year. This policy sees the designation of ‘person of interest’ being applied to individuals by the JCF and publicized in the media. This designation is used by the police to name individuals whom they are seeking to speak with and has resulted in damage to the reputation of countless innocent people some of whom are simply family members of persons who are allegedly suspects. The frequent use of this designation speaks to the lack of understanding of the duty that the state and its agents have to promote, preserve and protect fundamental human rights even in the context of taking effective action against crime and gangs. This practice is further evidence of the lack adherence domestically to the internationally protected and fundamental basic rights that exist within Jamaica.

64. These crime-fighting strategies as implemented within Jamaica over the reporting period and particularly since the State of Emergency in 2010, all too often constitute, in our view, disproportionate interference with fundamental human rights and involve serious violations of fundamental human rights particularly pursuant to the Covenant. In particular, the extension of the Constabulary Force Interim Provisions Act (in July 2011 for a further year) is a disproportionate interference with the fundamental rights of persons living in Jamaica, which is incompatible with the Article 9 (3) of the Covenant.

Recommendations:

- **The State party should:**
  - a.) **Ensure that no agency of the State particularly the Police in this context utilize the publishing of names ‘Persons of Interest,’ as a means of investigating crimes alleged to have been committed. Further that the practice be condemned and prohibited forthwith as incompatible with the rights protected under the Covenant ;**
  - b.) **Ensure that the actions of all state agents in respect to the investigation of offences alleged to have been committed uphold, promote and protect such rights protected pursuant to the Covenant.**
  - c.) **Amend the provisions of the Constabulary Force Interim Provisions Act that are inconsistent with rights protected under the Covenant.**

<sup>43</sup> Submissions on Proposed Crime Bill by Jamaicans for Justice. (2008).

<sup>44</sup> Ministry of National Security. (2008). A New Era of Policing in Jamaica: Transforming the JCF. Report of the JCF Strategic Review Panel. Jamaica.

<sup>45</sup> Also referred to as the “anti-crime” bills.



11. Please provide information on the measures taken, if any, to protect the rights of human rights defenders against violence and killings. Please also comment on the measures taken, if any, to investigate and bring to justice the people that killed human rights activists Brian Williamson and Lenford 'Steve' Harvey.

65. Brian Williamson and Lenford 'Steve' Harvey were both respected and openly gay human rights defenders. Brian Williamson was a co-founder of the prominent gay rights organization Jamaica Forum for Lesbians, All-sexuals, and Gays (J-FLAG). His case was completed in May 2006 with the sentencing of 25 year old Dwight Hayden to life in prison (which carries a minimum of 15 years in prison before eligibility for parole).<sup>46</sup> The case of Lenford 'Steve' Harvey, founder of Jamaica AIDS Support for Life (JASL), is still before the courts. J-FLAG has been monitoring the case and are pleased with the progress.
66. There is very little protection for human rights defenders working on LGBTI issues. Many persons have had to use pseudonyms and withhold information about their place of employment from families and friends. In March 2011, Maurice Tomlinson, a human rights defender who works with AIDS-Free World was threatened via email. Precautionary measures were granted for him.<sup>47</sup>
67. In general, homophobic crimes have been treated with a great deal of impunity. There is an ongoing failure to conduct thorough investigations or make arrests when crimes are perpetrated against LGBTI persons. In fact, the *Hated to Death Report* (2004), written by Human Rights Watch (HRW),<sup>48</sup> explains how crimes against LGBTI persons are often treated as "crimes of passion" even when there is glaring evidence of it being a homophobic attack.
68. While the Government alleges there is no legal discrimination against the LGBTI community, the lack of adequate legal action against perpetrators of LGBTI violence is a, de facto, condoning of such behaviour. Violent incidents against members of the LGBTI community have been on a steady rise over the past several years. There were 27 recorded homophobic discrimination & violent incidents to J-FLAG in 2009, 51 in 2010, and already 51 recorded incidents as of June 2011. This is an increasingly alarming situation that must be addressed by the Government of Jamaica.
69. The Government was challenged on their track record in protecting members of the LGBTI community in the recent Universal Periodic Review of Jamaica. The response of the Government was that "sexual orientation remains a sensitive issue. However, the Government will endeavour to take the necessary steps to address the concerns of all individuals."<sup>49</sup> This response points to the lack of sufficient political will needed to take action to end the serious levels of discrimination and violence faced by LGBTI persons, and neglects to consider that persons of the LGBTI community are entitled to a right to life the same as all other members of Jamaican society. We ask the international community to for assistance in this very important human rights struggle and strongly urge the Government of Jamaica to reverse its backwards policy on LGBTI rights.

Recommendations:

- **The State party should:**
  - a.) **Immediately repeal the buggery law, which condemns sexual relations between consenting adults.**
  - b.) **Accept the recommendations arising from the Universal Periodic Review:**
    - i. **Reinforce legal protections against discrimination to include sexual orientation and gender identity as prohibited grounds for discrimination;**
    - ii. **Initiate or join public campaigns so as to encourage tolerance towards homosexual, bisexual, transsexual, and intersex persons and start a public information campaign to combat discrimination based on sexual orientation.**

12. Please indicate whether, following the *de facto* moratorium on capital punishment, the State party intends to ratify the Second Optional Protocol to the ICCPR and amend the Constitution, with the aim to abolish the death penalty. Please specify all crimes that incur the imposition of the death penalty?

<sup>46</sup> Jamaica Gleaner. (21 May 2006). <http://jamaica-gleaner.com/gleaner/20060521/news/news7.html>

<sup>47</sup> Read about Maurice Tomlinson's case under Question 11 in Annex A.

<sup>48</sup> Human Rights Watch. (2004). *Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic*. <http://www.hrw.org/reports/2004/11/15/hated-death-0>

<sup>49</sup> Human Rights Council. (11 March 2011). Report of the Working Group on the Universal Periodic Review: Jamaica – Addendum. A/HRC/16/14/Add.1., p. 6.

70. In addition to the clear rejection made by the Government in the List of Issues, the Government has rejected a wide range of recommendations made by numerous states during the recent Universal Periodic Review Process to abolish the death penalty. As indicated by the Prime Minister in July 2009: “the government would honour Parliament’s decision in 2008 to retain the death penalty by resuming executions as soon as the appeal avenues available to death row prisoners were exhausted.”<sup>50</sup> It is asserted, “the authorities justify the retention of the death penalty as the will of the people.”<sup>51</sup>

71. In addition, the Government’s decision to limit the effect of the Pratt and Morgan<sup>52</sup> position through the newly established Charter illustrates the regression of the legal landscape of the country by several years. The legal position that was established by Pratt and Morgan prevented prisoners languishing on Death Row from being subjected to inhuman and degrading treatment by reason of: (a) the conditions under which persons sentenced to death are detained pending execution of the sentence; and (b) the length of time which elapses between the date on which the sentence is imposed and the date on which the sentence is executed. The failure to ensure that individuals sentenced to death in Jamaica are able to seek the review of their sentence on the basis established by Pratt and Morgan constitutes the entrenchment within Jamaican Law of a provision within the Charter that is wholly inconsistent with the fundamental rights protected under the ICCPR (see Question 21 for more information).

72. We contend that the retention of the death penalty and the limitation of the fundamental rights of individuals convicted and sentenced to death illustrate the Government of Jamaica’s lack of real commitment to Human Rights.

Recommendations:

- **The State party should:**
  - a.) **Accede to the Second Optional Protocol of the Covenant, and amend the Constitution with a view to abolishing the Death Penalty.**
  - b.) **Repeal such laws as constitute undue interference with fundamental rights protected under the Covenant.**
  - c.) **Implement the recommendations outlined in Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty.**<sup>53</sup>
  - d.) **Amend the Constitution to re-establish the jurisprudence of Pratt and Morgan within Jamaican Law.**

13. According to information before the Committee, there is a high rate of teenage pregnancies, many of which result in unsafe abortion. Furthermore, the Committee notes that abortion is one of the leading causes of maternal mortality. Please state the measures adopted, if any, to promote access to and delivery of family planning services and contraceptives. Please provide information regarding the availability of abortion services.

73. According to a UNICEF report,<sup>54</sup> teenagers account for roughly 20% (1 in 5) of all national births. Official figures from the Registrar General’s Department (RGD) revealed 7,596 of the 30,819 live births in 2008 were to girls between 12 to 19 years of age. This is due to issues such as forced sex, transactional sex, early sexual encounters, low use of contraceptives, and an overall lack of information on safe and responsible sex. The resulting teenage pregnancies not only put the health of the mother at risk, but they also face exclusion from educational and professional opportunities (only 34% of teenage mothers returned to school after giving birth).

74. There are programs that aim to assist teenage mothers get back to their education, such as those operated by the Women’s Centre which provides continuing education for girls who become pregnant while still at school and return to school after the birth of their babies. Approximately 1500 teen mothers voluntarily register in the programme each year. While this is a much needed and commendable program, its survival is threatened by its reliance on government funding. In August 2011, the Government decided to cut funding to the Centre, which would have effectively cut support to 500 teenage mothers,<sup>55</sup> public outcry caused the Government to reverse its

<sup>50</sup> Ibid.

<sup>51</sup> Amnesty International Public Statement 17<sup>th</sup> March 2011 see UKBA Country Report May 2011 pg.37

<sup>52</sup> Earl Pratt and Ivan Morgan v. The Attorney General for Jamaica et. al. (2 Nov. 1993). Privy Council Appeal No.10 of 993.

<sup>53</sup> E.S.C. res.1984/50, Annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, UN Doc. E/1984/84 (1984)

<sup>54</sup> UNICEF. (2006). Situation Analysis on Excluded Children in Jamaica Update 2006. [http://www.unicef.org/jamaica/resources\\_3950.htm](http://www.unicef.org/jamaica/resources_3950.htm)

<sup>55</sup> Jamaica Observer. (18 August 2011). Budget cut leaves pregnant teens in the cold: Women’s Centre hit by government expenditure cuts. <http://www.jamaicaobserver.com/news/Pregnant-teens-abandoned-Women-s-Centre-hit-by-government->

decision and restore monies to the program.<sup>56</sup>

75. Traditional perspectives on sexual relations exacerbate the attitude toward teenage pregnancy. Non-medical abortion is not an option to women in Jamaica, and those who perform them are at risk of criminal prosecution.<sup>57</sup> This is entrenched in the newly enacted Charter of Fundamental Rights and Freedoms, which purposely retains old abortion laws under S. 13(12)(c). Thus, teenage girls, face a serious challenge if they engage in sexual relations and end up pregnant as a result.

Recommendations:

- **The State party should:**
  - a.) **Provide and promote access to and of family planning services and contraceptives**
  - b.) **Immediately take steps to implement the recommendations of the Abortion Policy Review Committee which recommended changes to the law on abortion.**<sup>58</sup>

## **PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ART. 7)**

14. According to information before the Committee, corporal punishment is lawful in schools, homes and it is still on the statute books of the State party. Please explain the measures taken to eliminate all forms of corporal punishment in all settings. Please explain the concrete steps taken to pass into law the draft bill that seeks to repeal the Flogging Regulation Act, 1903 and the Crime (prevention of) Act, 1942.

76. It is of particular concern that the Government of Jamaica has not eliminated all forms of corporal punishment in schools and homes. In 2010, while commending the banning of corporal punishment in schools, the Special Rapporteur on Torture noted that there were no legal provisions banning corporal punishment in the domestic sphere. He was concerned that the use of corporal punishment appeared to be deeply entrenched in Jamaican society.<sup>59</sup>

77. Despite the Government's assertion in their response that corporal punishment is limited to specific levels of the Jamaican school system, reports of abuse continue to be widespread ranging from tape being placed on a child's mouth, having to stand up on one leg for a prolonged period in the sun, and beatings.<sup>60</sup> This blatant disrespect for the rights of children must be considered in violation of Article 7 of the ICCPR.

78. Further, the Government response claims that corporal punishment is strictly prohibited in state childcare facilities, but this is contradicted by a number of reports which illustrate the Jamaican government and Child Development Agency's (CDA) ineffectiveness in caring for children in their care. Monitoring reports of the CDA for five children's homes obtained in August 2009 under the Access to Information Act (ATI) demonstrate incidents of neglect and abuse:

- Physical abuse - the SOS Children's Village, November 2008;
- Sexual abuse - Alpha Boys' Home, January 2008;
- Shortage of food - Windsor Girl's Home, April and September 2008;
- Babies and children without proper supervision at night - Maxfield Park Children's Home, December 2008.

79. One specific case at Rio Cobre Juvenile Correctional Centre in St. Catherine is an example of the physical abuse handed out by employees in many facilities across the island. The report, documented by the superintendent of the facility on February 26, 2010, describes wards as being "beaten with sticks and boxed up by some of the correctional officers."<sup>61</sup> The superintendent explains "the officers were quite cognizant of the fact that physical

---

expenditure-cuts\_9469411#ixzz1WMLvFman

<sup>56</sup> Jamaica Observer. (19 August 2011). Money to be restored to programme for pregnant teens.

[http://www.jamaicaobserver.com/news/Money-to-be-restored-to-programme-for-pregnant-teens\\_9477094#ixzz1WMMNeVau](http://www.jamaicaobserver.com/news/Money-to-be-restored-to-programme-for-pregnant-teens_9477094#ixzz1WMMNeVau)

<sup>57</sup> Abortions are only granted under extenuating circumstances (i.e. if the life of the mother is at risk).

<sup>58</sup> Abortion Policy Review Advisory Group. (2007). Final Report. Available via:

[http://www.japarliament.gov.jm/attachments/375\\_Abortion%20Policy%20Review%20Advisory%20Group%20Final%20Report.pdf](http://www.japarliament.gov.jm/attachments/375_Abortion%20Policy%20Review%20Advisory%20Group%20Final%20Report.pdf)

<sup>59</sup> United Nations Human Rights Council. (11 Oct. 2010). Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. A/HRC/16/52/Add.3. p. 15.

<sup>60</sup> Hear the Children's Cry. (2011).

<sup>61</sup> Rio Cobre Juvenile Correctional Centre. (26 Feb. 2010). *Unnecessary Physical Abuse of wards at the centre by correctional officers.*

abuse of wards is prohibited and this is a message echoed on countless occasions....With the very ugly limelight the Department has now found itself in the eyes of the public, the recent incident with the wards here has shown that the officers just do not care.” This particular situation portrays a blatant problem with both the employment and training of correctional officers, and a complete disregard for child care and protection by individuals who should be upholding this mandate.

Recommendations:

- **The State party should:**
  - a.) **Enact measures within the Jamaican childcare system to comply with human rights standards laid out in both the ICCPR and CRC.**
  - b.) **Take immediate action to ensure that staff are properly qualified to work with children, and receive routine on-the-job training to ensure high quality standards of care.**
  - c.) **Take legislative action to ban corporal punishment in the domestic and public sphere.**
  - d.) **Widen the scope and prohibition of corporal punishment to all aspects of Jamaican society.**
  - e.) **Commit to signing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment within two (2) years of this review.**

15. Please provide information on: (1) the investigations and number of complaints received by the Director of Public Prosecutions against law enforcement and detention personnel related to incidences of torture and ill-treatment; (2) the type of charges brought against law enforcement officers; (3) the number of cases dismissed, and the reasons for their dismissal; (4) the number of officials disciplined and the sanctions imposed; and (5) concrete measures taken for the rehabilitation and compensation of victims of torture.

80. It is extremely worrying that the State would use the lack of domestic legislation governing the act of torture to absolve themselves from having to prosecute individuals alleged to have committed acts of torture against persons within Jamaican jurisdiction.

81. Jamaicans for Justice has sought over many years to get information such as that requested by the Committee in the list of issues. A request for information from the DPP under the Access to Information Act resulted in JFJ getting a report that contained little information on the break down of charges brought against law enforcement officers. The Government explained this was due to the fact that there is currently no legislation governing torture as a separate or distinct offence. We were, however, able to ascertain from their information that there has been a total of 1,751 complaints received by the Office of the Director of Public Prosecutions against law enforcement and detention personnel related to instances of alleged ill-treatment between 2008 to 2010. As per the Government’s response, only 1,099 received rulings. However, information on the rulings and cases was only provided for seven (7) matters. We question what the breakdown was on the other 1092. The difficulty in obtaining even this paucity of information on the type of charges and number of cases dismissed in relation to law enforcement officers illustrates the ongoing problems with Government transparency. It also highlights the State’s reluctance to place the necessary priority on dealing with issues of torture, cruel, and inhumane treatment, especially as it pertains to the actions of state agents.

82. The Government’s response to the Committee fails to acknowledge the prevalence of torture and ill-treatment across many sectors. The customarily abusive actions of police officers have not yet been challenged, and remain a serious issue of concern for young men interacting with law enforcement officers (refer to question 21 for more information). There is established data that those detained in police lock-ups are detained under inhumane conditions (as per Special Rapporteur Report). Despite legal provisions stating that persons can only be held to a maximum of 72 hours without charge, according to the Jamaica Constabulary Force’s own data, the length of time for people being held in pre-charge detention can range from three (3) to twenty five (25) days, which is in violation of domestic law and international law (discussed more in Question 21, Paragraph 110).<sup>62</sup> Children in the custody of the State also continue to be subjected to inhumane and degrading treatment, are at risk of physical, psychological, emotional and sexual abuse, and are routinely deprived of their basic rights to protection and care (example, Armadale in question 25). Further, as mentioned in Question 12, the death penalty remains entrenched in the Constitution and the detention conditions of those on death row cannot, according to the Charter, be deemed cruel and inhumane.

---

Incident Report to the Commissioner of Corrections by Superintendent Barrington James. Attained through Access to Information 17 May 2011.

<sup>62</sup> Refer to Table in Annex A. “The Constabulary Force (Interim Provisions for Arrest and Detention) Act 2010. July 2010 – June 2011.

83. The Government's response also fails wholly and consistently to take into account their obligations both positive and negative under the Covenant. While the Charter Section 13(6) now protects any person from torture or inhuman or degrading punishment or other treatment,<sup>63</sup> there remains no clear definition of torture.<sup>64</sup> Further, Section 13(7) essentially retains the legality of punishments which constitute torture or inhuman or degrading punishment under the Covenant.<sup>65</sup> In addition, the existence of the Offences Against the Person Act, would not, in the view of civil society, protect all victims of torture in the Jamaican context, and does not provide a remedy to individuals who are subject to abuse by state agents which relates not only to acts that cause physical pain but also acts that cause mental suffering to the victim.
84. It is evident that the current system of legislative provisions governing the complaints and investigations into police misconduct has not sufficiently addressed the problem that exists in many communities on the abuse of power and authority. The current provisions/legislation that govern the disciplinary matters within the police force lack the ability, independence and transparency to ensure public scrutiny of the actions of police officers alleged to have used excessive force (see more in Question 9). In circumstances where the actions of the officer fail to meet the criminal standard, police officers routinely resume duty, and in some cases are considered for promotion.<sup>66</sup> JFJ has recently initiated a legal challenge in the Supreme Court to the legality of the Public Service Commission's decision to promote an officer that is the subject of 28 allegations of serious misconduct.
85. We are deeply concerned by the Government's practice not to impose sanctions on official's accused of ill-treatment (as highlighted in their response). It is necessary, in our view, to establish clear guidelines incorporating the duties of the State of Jamaica under the Covenant, in circumstances where state officials are alleged to have been involved in behaviour that would constitute a criminal offence and/or a disciplinary offence. The proposed guidelines should ensure that complaints received from members of the public are effectively, thoroughly and impartially investigated prior to decisions being made with regard to the disciplinary or promotional advancement of the officers who are the subject of the complaints. In order to be consistent with the Covenant rights, the new provisions ought to ensure that no conclusions are drawn without the participation of the victims and / or family members of the victim.
86. Notwithstanding the establishment of INDECOM, it is our view that a review of the guidelines under which disciplinary processes, are administered require greater adherence to principles such as those outlined by the United Nations High Commissioner for Human Rights – International Human Rights Standards for Law Enforcement. We are particularly interested in those standards that pertain to organizational and functional independence; adequacy of investigations; prompt and expeditious investigations and response of police officials; public scrutiny; and the involvement of victims in the process of redress.
87. Finally, it is important to note there is no legislation specifically prohibiting the use / admissibility of confessions procured through the use of torture, or other coercive means. However, this is prohibited in common law.<sup>67</sup> The Government of Jamaica should ensure that such necessary legislation as is necessary be enacted to provide for the conducting of effective investigations into complaints of violations of fundamental human rights.

Recommendations:

- **The State party should:**
  - a.) **Adopt a clear definition of torture, as outlined by Article 7 of the Covenant and also Article 1 of the CAT.**

<sup>63</sup> Section 13 (6) states: "No person shall be subjected to torture or inhuman and degrading treatment."

<sup>64</sup> "Despite existing provisions prohibiting the excessive the use of force and inhuman treatment, there is no definition of torture as a crime in domestic legislation. This may be the reason why during the mission, the Special Rapporteur observed that the term "torture" is not part of the Jamaican lexicon. However, the absence of a crime of torture in the law does not mean that it does not exist in practice." In, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Jamaica, Addendum. (Oct 2010). A/HRC/16/52/Add.3.

<sup>65</sup> The Charter of Rights and Fundamental Freedoms, retains the legality of legislation that would be inconsistent with and in violation of the rights protected under the Constitution. This makes it impossible for a domestic court judge to make a finding that a punishment that constitutes inhuman and degrading treatment and/or torture is contrary to the Charter, and thereby unconstitutional.

<sup>66</sup> Refer to Annex A for a copy of paragraphs 55 to 57 taken from Jamaicans for Justice & the George Washington University Law School. (25 March 2011). *The State of Human Rights in Jamaica since the State of Emergency 2010*. Report to the Inter-American Commission on Human Rights.

<sup>67</sup> Refer to Article 7 of the Covenant.

- b.) Fully implement its obligations under international human rights law to ratify the Convention against Torture and also the Optional Protocol.
- c.) Enact legislation to prohibit torture applicable to the procurement of confessions and statements through torture or other prohibited treatment.
- d.) Enact legislation incorporating the prohibition of torture to include mental suffering to the victim as well as physical pain
- e.) Adopt a provision that prohibits confessions obtained through the use of torture.
- f.) Amend the Charter of rights to provide redress for those convicted and sentenced to death, and enable the ability to allege violations of rights protected under the Covenant, particularly pursuant to Article 7.
- g.) Implement minimum standards for detention and imprisonment incorporating the Standard Minimum Rules for the Treatment of Prisoners (1955), Body of Principles for Protection of All Persons Under any form of Detention or Imprisonment (1988), and the Basic Principles for the Treatment of Prisoners (1990).
- h.) Ensure that no officer who is the subject of numerous allegations of excessive use of force resulting in a violation of the right to life shall be promoted while an investigation is underway.
- i.) Ensure all officials accused of wrongdoing are suspended from duty until the matter is properly investigated and processed.
- j.) Commit to signing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment within two (2) years of this review.

16. According to information before the Committee, there is a high incidence of sexual violence against women and girls in the State party, such that in 2009 alone, the National Police reported 610 cases of rape and 511 cases of sexual abuse. Furthermore, research findings record that in 2009, 49% of the 750 girls aged between 15 and 17 had experienced sexual coercion or violence. Reports further indicate that women and girls in inner-city communities are particularly exposed to gang violence arising from reprisals for being perceived to have reported criminal activities of gang members. Please provide information on the concrete measures taken, if any, to (a) promote reporting of sexual violence to the police, (b) combat all forms of violence against women and girls, and (c) investigate cases of sexual violence including rape, prosecute perpetrators and punish them with appropriate penalties.

AND

17. Please provide information on the magnitude of the problem of domestic violence. What is the national legal framework to combat such violence, in particular measures for ensuring that acts of domestic violence are effectively investigated and perpetrators prosecuted and sanctioned? Also provide information on any other steps taken to combat domestic violence, such as training for judges, prosecutors, police and health officers and awareness-raising campaigns for women on their rights and available remedies. In addition, please provide information on: (a) the number of complaints received; (b) investigations carried out; (c) the types of penalties imposed; (d) compensation awarded to the victims and; (e) the number of safe shelters and any other resources allocated to assist victims of domestic violence.

88. The Domestic Violence Act 1996 was amended in order to give women the possibility of applying through the court system for a protective order (section 3(1)). However, enforcement of this protection is not sufficiently ensured by legislation. It is evident that without an adequate means to enforce a protective order, the order is without teeth and therefore fails to offer women the protection from violence that is so desperately needed in those circumstances. Further, there are insufficient shelters/safe houses available to women who are experiencing domestic violence within the jurisdiction.<sup>68</sup> It is important to note that the Special Rapporteur on Torture, Manfred Nowak made particular mention within his report to the shortcomings of the Domestic Violence legislation, in regards to the enforcement of protective orders.

89. Domestic Violence and other forms of gender-based violence require legislative protections that provide effective safeguards from the alleged violence. The Government of Jamaica should implement a national plan of action to combat domestic violence. Further legislation should be implemented to assist and ensure that women who are able to obtain orders granting protection are able to properly enforce them. In this regard a national policy would address the issues relating to enforcement of the legislation enacted to protect women in these circumstances.

<sup>68</sup> See: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Jamaica, Addendum. (Oct 2010). A/HRC/16/52/Add.3.

90. The Bureau of Women’s Affairs is in the process of developing a Protocol for combating gender-based violence. Although the protocol is in its draft form, we are concerned by their not having collaborated with many of those organizations, both inside and outside of the government, involved in combating gender-based violence.
91. There is only one (1) shelter for victims of domestic violence in Jamaica. This is inadequate to the number of incidences of domestic violence occurring in Jamaica, and fails to meet the promises laid out by the Government in its election manifesto in 2007, where they committed to “increase the number of shelters for victims of domestic violence, especially women and children.”<sup>69</sup>
92. Comprehensive work will need to take place with the Police and civil society to fully address the needs of women in dealing with domestic violence and gender-based violence issues. In addition to enacting legislation the Government of Jamaica must ensure that the state provides adequate training to those service providers, such as the police and the court, required to implement the legislation. Although there are specialist officers within the Police Force specifically mandated to investigate allegations of sexual violence, notwithstanding their training and specialization, we are aware of instances of discrimination and prejudice in the manner in which specific complaints are addressed and/or investigated. There have been instances where women have sought the protection of the police as the first response to these issues, only to be discriminated against, abused, and sent away. In one particular case, a woman seeking police protection was turned away for being “dressed inappropriately” and later killed by her adversary.<sup>70</sup> It was commendable that following this incident the Commissioner of Police expressed a policy that no one should be turned away from a police station due to their style of dress. Until appropriate and proactive policies are put in place women will continue to experience discrimination and abuse when reporting allegations of violence to the state agents responsible for enforcing the legislation.
93. The Government of Jamaica espoused its commitment to bringing the country’s legal framework into compliance with the provisions of CEDAW.<sup>71</sup> However, the Government of Jamaica’s response to the List of Issues merely sets out the legislation that exists to address equality between men and women without particularizing the societal responses to equality between men and women. Therefore, while women appear to be making important strides, there remain significant barriers to their attaining full equality before the law and in the social, economic, and political sphere. Much of this is rooted in the deeply entrenched patriarchal system prevalent in Jamaican society.

Recommendations:

- **The State party should:**
  - a.) **Adopt a national plan of action to combat domestic violence, and combat violence against women by taking effort to break down prevailing gender-based stereotypes.**
  - b.) **Provide funding for the establishment and operations of shelters for victims of domestic violence.**
  - c.) **Implement policy that requires the police and other state agents to take appropriate action to protect women seeking assistance and protection from domestic violence perpetrators.**
  - d.) **Immediately undertake awareness-raising measures and sensitization of, in particular, the judiciary, law enforcement officers and prosecutors, as well as teachers, health-care and social workers and the media on domestic and sexual violence, legislation and provisions.**
  - e.) **Establish a monitoring and evaluation mechanism so as to regularly assess the impact and effectiveness of law enforcement and programmes aimed at preventing and redressing violence against women**

18. Please provide information on the legal framework that regulates the protection of individuals from being extradited or forcibly returned to countries where they are likely to be subjected to torture or other inhuman or degrading treatment or punishment or other serious violations of human rights.

94. The State of Jamaica offers administrative protection for individuals seeking Refugee status. However, those detained following a breach of domestic immigration law may be detained for an undetermined period of time pending removal. Pursuant to section 15 of the *Aliens Act*:

An alien, with respect to whom a deportation order is made or a certificate is given by a court with a

<sup>69</sup> Jamaica Labour Party (JLP) Manifesto. (2007). Point 19.6, p.26.

<sup>70</sup> Jamaica Gleaner. (12 Dec. 2010). Dress Code Enforced. Available via: <http://jamaica-gleaner.com/gleaner/20101212/lead/lead8.html>

<sup>71</sup> The Report of the Working Group on the Universal Periodic Review – Jamaica (UPR WG Report) 4<sup>th</sup> January 2011

view to the making of a deportation order, may be detained in such a manner as may be directed by the Minister and may be placed on board a vessel about to leave the island, and shall be deemed to be in legal custody [emphasis added] whilst so detained and until the vessel finally leaves the Island.

Further pursuant to section 26 of the *Immigration Restriction (Commonwealth Citizens) Act*:

If any Commonwealth citizen is considered by an immigration officer to be a prohibited immigrant, then subject to the provisions of this Act and the conditions attached to any leave granted thereunder, any Resident Magistrate may, on the application of an immigration officer or of any person deputed in writing by the Chief Immigration Officer for the purpose of making such application, order the immigrant be removed from the Island and in the meantime [emphasis added] to be detained in custody.

As such the legislation does not specify a maximum period of detention for those deemed to be within the territory of Jamaica illegally. There have been instances of individuals being detained for as long as eight months following an immigration violation despite an application having been made on the basis of marriage to a Jamaican citizen.

95. Notwithstanding the right of the State of Jamaica to enforce immigration controls, it is submitted that the detention of individuals to effect removal ought not to be excessive or arbitrary. It is important to note that the Government ought not to detain large numbers of people for the breach of immigration rules, merely because it is administratively convenient to do so. It is possible therefore that without provisions within the domestic legislation to protect the Covenant rights of foreign nationals under Article 9. It is conceivable that a foreign national could remain in detention for a substantial period of time without either representation or judicial oversight.
96. In circumstances where legal representation is available for foreign nationals detained under the jurisdiction of the Aliens Act, the cost of such representation maybe prohibitive even in circumstances where the detainee has a valid claim. Applications for Habeas Corpus and/or Judicial Review (Administrative Review) may be made against the decisions upholding administrative detention.
97. In response to the Committee’s List of Issues, the Government of Jamaica has failed to address the implementation of Article 9 of the Covenant in practice within the jurisdiction.

Recommendations:

- **The State party should:**
  - a.) **Ensure that there is an effective legal framework available to Foreign-Nationals in cases in which an individual claims to have been deprived of his/her liberty in violation of the Covenant.**

## **ELIMINATION OF SLAVERY AND SERVITUDE (ART. 8)**

19. Please provide information on: (a) the State party’s legislative framework for combating trafficking in human beings, in particular women and children; (b) the prevalence of this phenomenon, expressed in statistical data disaggregated by gender, age and country of origin; (c) the number of prosecutions, convictions and sanctions imposed on persons involved in human trafficking; (d) any training programmes for professionals involved in implementing the State party’s measures against trafficking, including the police, the judiciary, members of the prosecution authorities and social workers, and (e) how are the human rights of the victims of trafficking protected.

98. The 10<sup>th</sup> Annual Trafficking in Persons Report by the US State Department describes Jamaica as “a source, transit, and destination country for women and children subjected to trafficking in persons, specifically conditions of forced prostitution and forced labour.”<sup>72</sup> As such, we were pleased to note the Government’s recent ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (26 August 2011).
99. Statistics on the prevalence of sex tourism and trafficking is difficult to ascertain as there is no formal tracking system in place. Perhaps more accurately, the Government is unable to provide comprehensive data on the prevalence of sex tourism and trafficking in the country. According to a study of the Jamaican sex tourism and trafficking industry by Shared Hope International, there were approximately 20,000 individuals connected with the

<sup>72</sup> US Dept. of State. (2010). Trafficking in Persons Report, 2010. Available via <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm>  
Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/JAM/Q/3)



sex industry in 2004.<sup>73</sup> Many of these persons are children. It is widely believed that many of the 1,859 children that went missing in 2009 were caught up in the trafficking industry.<sup>74</sup>

100. A study by Ricketts and Dunn for the National Task Force against Trafficking in Persons found that trafficking victims were 79.3% females between the ages of 18 to 24.<sup>75</sup> The reasons that led to persons becoming involved in the sex trade were: 27.3% - Poverty and unemployment; 22.1% - desire for a better job; and, 20.8% - inadequate financial support for children.

Recommendations:

- **The State party should:**
  - a.) **Immediately ensure the implementation of the obligations under the Protocol to the Convention on the Rights of the Child on the Sale of Children.**
  - b.) **Immediately ensure the implementations of the obligations under the Protocol to combat trafficking of all persons**
  - c.) **Immediately ensure that trafficking offences are prosecuted in a timely manner.**
  - d.) **Immediately take action to comprehensively record and track incidences of trafficking and sex tourism.**

## **RIGHT TO LIBERTY AND SECURITY OF PERSON AND TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY (ART. 9 AND 10)**

20. Please provide information on permissible grounds of deprivation of liberty and on redress mechanisms in place to address instances of unlawful arrest or detention. Also comment on reports that during the state of emergency declared on 23 May 2010, about 4, 000 people were arrested and detained by the Police. Please provide statistical data on the grounds of arrest. Please explain how these were necessitated by the exigencies of the state of emergency.

101. The Charter of Fundamental Rights and Freedoms, Section 14 (1), protects all persons under Jamaican jurisdiction from being deprived of their liberty except “on reasonable grounds and in accordance with fair procedures established by law in the following circumstances”: being unfit to plead; execution of a criminal sentence; contempt of court; on a court order to fulfil a legal obligation; execution of court order; arrest or detention where suspected of committing a crime or to prevent him from committing a crime; care and protection of minor; to prevent spreading contagious disease; for care or treatment of mentally ill and drug or alcohol addicted; immigration detention or deportation.

102. The *Constabulary Force (Interim Provisions for Arrest and Detention) Act* holds that a person may be detained “upon reasonable suspicion that he is in the course of committing or has committed or is about to commit an offence” (art. 50(B)(5)). It also includes safeguards in relation to arrests based on warrants, including the right to be duly informed of the reason for being arrested or detained (i.e. within 12 hours according to section 50 (G)(1)), and the right to be immediately brought before a justice of the peace to determine if there are reasonable grounds for arrest and detention (art. 50 (F)(2)). After appearing before a justice of the peace, if the arrest is deemed in the interest of justice, the accused can be taken into custody for 24 hrs, at which point the accused would be brought before a resident magistrate. It must be noted, however, that the resident magistrate does not necessarily review the legality of the arrest.

103. The 2010 State of Emergency, and the regulations that accompanied it, opened more avenues for the violation of Jamaican peoples human rights. Grave concerns were, and continue to be expressed by members of civil society, about the large number of deaths (the official figure is 73 but unofficial figures as high as 100 have been alleged) that occurred during the period of the State of Emergency, reportedly at the hands of agents of the state. More than 4,000 Jamaicans, including children, were detained under the State of Emergency. The cases received by JFJ offices and media reports confirm that numerous young men were corralled into custody and processed before being released without charge. Processing includes the fingerprinting and photographing of individuals who have been detained without being afforded an opportunity to secure legal representation. The detentions lasted in

<sup>73</sup> Shared Hope International. (2007). Demand: A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, the Netherlands, and the United States. Available via <http://www.sharedhope.org/Portals/0/Documents/DEMAND.pdf>

<sup>74</sup> US Dept of State. (2010).

<sup>75</sup> Ricketts and Dunn. (2007). Human trafficking for sexual exploitation and forced labour in Jamaica. National Task Force against Trafficking in Persons, Ministry of National Security, Government of Jamaica.

some instances for days, in other cases for weeks. As of September 1<sup>st</sup> 2011, there were at least three persons were last seen in the custody of the Security Forces,<sup>76</sup> purportedly to be taken to detention facilities for processing, and have not been seen since.<sup>77</sup>

104. The 4,000 persons detained and 'processed' included dozens (if not hundreds) of children (boys) between the ages of 14 years and 17 years.<sup>78</sup> The case of sixteen (16) year old Dale Anthony Davis is particularly poignant. Dale was one of the three teens last seen in the company of the security forces after he had been taken from his aunt who he helped to look after. The case is now under investigation by INDECOM.<sup>79</sup>

105. The arbitrary detention of these people during the State of Emergency has yet to be investigated in light of the obligations of the State pursuant to the Covenant. It is premature to suggest that no violations have occurred given that there has been no concluded investigation into the events surrounding the detention. In light of the complaints received by members of civil society, it is doubtful that all 4,000 arrests will be justifiable based upon the behaviour of the individuals being such that there were "reasonable grounds for suspecting that he or she is acting in a manner prejudicial to public safety, or has committed an offence against the Regulations."<sup>80</sup>

106. Credible reports were also received during the State of Emergency and after its cessation of numerous allegations/instances of excessive use of force and arbitrary detention at the hand of the security forces, some of which resulted in violations of the right to life. Thus, it is submitted that although the Government of Jamaica may state their actions were necessary to maintain law and order, their persistence in seeking to extend legislative provisions enacted during the State of Emergency suggest a trend towards undue and arbitrary interference with fundamental human rights, incompatible with their obligations under the Covenant.

Recommendations:

- **The State party should:**
  - a.) **Immediately establish/commence a Public Inquiry into the State of Emergency with specific emphasis upon the compliance of the State Party to the Covenant during the period.**
  - b.) **Implement minimum standards for detention and imprisonment incorporating the Standard Minimum rules for the Treatment of Prisoners (1955), Body of Principles for Protection of All Persons Under any form of Detention or Imprisonment (1988) and the Basic Principles for the Treatment of Prisoners (1990)**
  - c.) **Immediately amend the current legislation permitting pre-charge detention for 72 hours to 48 hours, and the opportunity for Judicial Review within that period.**

21. Please provide information on the legislative requirements for placing persons in police custody and pre-trial detention, including on the maximum length of custody and pre-trial detention. Also elaborate on the rights of persons while in police custody, including access to a lawyer, and on the maximum period of detention before an individual is brought before a judge. Furthermore, please comment on information before the Committee that there are government proposals to extend the period of detention without bail to 60 days.

107. The 2011 Charter of Rights guarantees all Jamaicans the right to life, liberty and the security of the person and the right not to be deprived thereof except in the execution of the sentence of a court in respect of a criminal offence

<sup>76</sup> Amnesty International. (May 2011). Jamaica: A Long Road to Justice? Human Rights Violations under the State of Emergency, AMR38/002/2011. Also see: Jamaica Observer. (9 Nov. 2010). Three boys missing from Tivoli incursion. Available via [http://www.jamaicaobserver.com/columns/Three-boys-missing-from-Tivoli-incursion\\_8133355](http://www.jamaicaobserver.com/columns/Three-boys-missing-from-Tivoli-incursion_8133355)

<sup>77</sup> The practice of "processing" young men is not a new one in socio-economically depressed communities. It appeared that the security forces believed the State of Emergency gave them carte blanche to detain young men for the purpose of developing an unlawful database of young men who can then be tracked as being "known to police". The State of Emergency was operated in a discriminatory fashion as security forces focussed their operations in inner-city (socio-economically depressed) neighbourhoods, rounding up only and almost all young men in these areas for the purpose of "processing". Jamaicans for Justice continues to receive reports of groups of young men being indiscriminately scooped up into the back of trucks during police "operations" and taken to police stations to be "processed".

<sup>78</sup> Jamaica Observer. (10 May 2010). *CDA Hunts Homes for Detained Tivoli Boys*. [http://www.jamaicaobserver.com/columns/Three-boys-missing-from-Tivoli-incursion\\_8133355](http://www.jamaicaobserver.com/columns/Three-boys-missing-from-Tivoli-incursion_8133355); Jamaica Gleaner. (27 May 2010). *Children as young as 14 Held*. <http://mobile.jamaica-gleaner.com/gleaner/20100527/news/news3.php>

<sup>79</sup> INDECOM. (20 Jan 2011). INDECOM takes on probe into the disappearance of Tivoli teen - Dale Anthony Davis. <http://indec.com.gov.jm/Release/INDECOM%20-%20Missing%20Teen.pdf>

<sup>80</sup> See paragraph 115 of the GOJ Response to the List of Issues referring to the Emergency Regulations during the State of Emergency. Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/JAM/Q/3)

of which the person has been convicted. However, under Section 14(1)(d) of the Charter, a person may be deprived of his liberty “in execution of an order of a court made in order to secure the fulfilment of any obligation imposed on him by law.” This provision effectively brings into question whether the Government is in contravention of Article 11 of the ICCPR, which prohibits the imprisonment of persons on the ground of inability to fulfil a contractual obligation.

108. Also, under the new Charter, it is important to note there is no time limitation for detaining persons suffering from a mental disorder or drug addiction without their consent. This is contrary to the core guarantee of Article 9 of the ICCPR. As noted in a report by the US State Department,

...in practice the authorities sometimes remanded suspects for psychiatric evaluation, some for as long as three years when their cases were ‘lost in the system.’ Magistrates were required to inquire at least once a week into the welfare of each person listed by the JCF as detained, but few did so in practice especially in the busy Kingston/St Andrew corporate area.<sup>81</sup>

109. In circumstances where individuals are detained administratively in order to facilitate health care and/or a mental health evaluation, regard should be given by the relevant state agents to the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.<sup>82</sup> The UN Principles require that persons who are detained be informed without delay of the grounds of admission; and that their detention should be decided by at least two mental health practitioners. In addition a review body should be informed of and review the detention. Without the above-mentioned safeguards, it is evident that the Government of Jamaica will continue to be in breach of its obligations under the Covenant.

110. One of the Anti-Crime laws introduced immediately after the State of Emergency was *The Constabulary Force (Interim Provisions for Arrest and Detention) Act*. Further to the response in Question 20, the Act seeks to improve the police force’s ability to “catch perpetrators of crime” and reduce the crime rate by temporarily extending the pre-charge detention period of persons, from 24 hours to 72 hours for one year (July 2010 – June 2011). As of July 2011, this temporary Act has been extended for an additional year (Also discussed in Paragraph 82).

111. The extension of *The Constabulary (Interim Provisions) Act* is a clear breach of the core guarantee of Article 9 of the Covenant that those arrested must be promptly brought before a judge. JFJ continues to receive reports of individuals being held over the established 72 hours without being charged. The Opposition Spokesman on National Security has reported in Parliament on police statistics that show detainees are being held for between five and 12 days before being charged and pointed to the example of one man being detained for 42 days without being charged.<sup>83</sup> It is further disconcerting that “If a detainee requests access to counsel, the law requires police to contact duty counsel...however authorities continued to wait until after detainees had been identified in a line-up before contacting duty counsel for them.”<sup>84</sup>

112. The use of detention to further investigations is a disconcerting practice. In cases of detention where the police intend to use an identification parade,

Section 63(A) of the Judicature (Resident Magistrates) Act applies. According to the Resident Magistrates Act, a magistrate is to make enquiries at least once a week into each person detained pending an identification parade. At that time, the magistrate may extend the remand period or order that the person be taken before a court within 24 hours. However, there are no limits in the legislation to the time either an adult or a juvenile may be held in custody pending an identification parade.<sup>85</sup>

113. Recently, the Government attempted to extend pre-trial detention for 60 days through *The Bail (Interim Provisions*

---

<sup>81</sup> Ibid.

<sup>82</sup> Principles for the Protection of Persons with Mental illness and Improvement of Mental Health Care GA res 46/119, 46 U.N. GAOR Supp. (N0.49) at 189, UN Doc A/46/49 (1991)

<sup>83</sup> See: Jamaica Gleaner. (25 July 2011). Unfair and Unjust. Available via <http://jamaica-gleaner.com/gleaner/20110725/lead/lead8.html>; Jamaica Gleaner. (20 July 2011). Hay-Webster sides with JLP on ‘Detention Law’. Available via <http://jamaica-gleaner.com/gleaner/20110720/lead/lead3.html>

<sup>84</sup> US State Department Report. (2010). Section 1 (d).

<sup>85</sup> United Nations Human Rights Council. (11 Oct. 2010). Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. A/HRC/16/52/Add.3. p.6, para. 18.

*for Specified Offences) Act*, however the Act was overruled by the Supreme Court in July 2011 as unconstitutional. The extension of detention periods is even more unsettling given the failure of the Government to acknowledge in their response, the frequent use of Justice's of the Peace known to 'rubber stamp' the continued detention of individuals based upon the police version of events without adequately reviewing the legality of the detention. The Minister of Justice recently and publicly took issue with Justice's of the Peace for signing warrants to detain persons without having reasonable grounds for their detention.

114. We recommend there ought to be proper judicial scrutiny of pre-charge detention, particularly in circumstances where detention may be extended arbitrarily on the grounds that the suspect is required to attend an identification parade. Further, it is noted that the Human Rights Committee has expressed views that detention for 48 hours without judicial review is unreasonably long pursuant to Article 9(4) of the Covenant. Thus, it is imperative that rather than the Government enacting legislation to extend the powers of detention available to the police force, it should properly implement the protections available to individual persons to ensure against use and abuse of arbitrary detention during the course of the investigative process.

Recommendations:

- **The State party should:**
  - a.) **Immediately take action to reduce detention periods from 72 to 48 hours in accordance with Human Rights Committee recommendations.**
  - b.) **Prohibit the arbitrary and warrant-less arrest and detention of persons under Jamaican jurisdiction, and implement an independent review mechanism to prevent arbitrary detention.**
  - c.) **Ensure Justice's of the Peace are properly trained on the Right to Liberty and Security of Person and Treatment of Persons Deprived of their Liberty; and, take action to discipline those who sign warrants in situations where evidence is lacking.**

22. Please provide information on legislative and all other rules regarding treatment of all persons deprived of their liberty, as well as concrete measures taken to monitor their effective application. Also explain what procedures exist whereby a complaint of ill-treatment by prison officials or other authorities in places of detention, including in psychiatric institutions, can be filed and duly investigated, perpetrators brought to justice, and victims offered redress and compensation.

115. The Charter of Fundamental Rights and Freedoms provides that no person shall be deprived of his liberty except on reasonable grounds and in accordance with fair procedures established by law. However, civil society is particularly concerned by the Government of Jamaica's renewal of legislation in 2011, initially passed to facilitate policing during the State of Emergency in July 2010, as domestic legislation that specifically curtails the rights of persons in Jamaica for another year.

116. Further to comments made in Question 21 about the Constabulary (Interim Provisions) Act, in our view, the new provisions are inconsistent with the protections afforded to persons in Jamaica pursuant to the ICCPR, and undermine the provisions within the Charter of Fundamental Rights and Freedoms providing for persons to be brought "forthwith or as soon as is reasonably practicable before an officer authorized by law or a court."<sup>86</sup> In our view, despite the Government of Jamaica's contention that most of the provisions of the ICCPR are contained within the Constitution and various pieces of legislation, in practice the Government of Jamaica has sought to limit and curtail those rights particularly under the guise of fighting crime.

117. An application may be made to the Supreme Court of Jamaica seeking redress for an alleged violation of a constitutional right. Section 19 of the new Charter provides for application for redress being made to the Supreme Court by any person, who believes his or her guaranteed rights has been, is being or is likely to be violated. This form of redress may place effective redress for violations of their rights out of the reach of the average poor persons living in Jamaica, who is more likely to have his rights violated than a person who is able to bear the financial burden of taking a matter before the Supreme Court. The costs attached to securing legal representation to move the Court to make "such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of this chapter to the protection of which the person concerned is entitled" as is provided for in 19(4) may be financially prohibitive to most people living in Jamaica.

118. In addition to the complaints mechanisms mentioned in the Government's response, in general the Government

---

<sup>86</sup> Section 14(3)(a)(i) Charter of Rights

occasionally allows private groups, private organizations and human rights NGOs to visit prisons and prisoners are able to make complaints to the Office of the Public Defender without censorship.<sup>87</sup> However, we are unaware of any system that specifically safeguards inmates suffering from mental illness and their ability to make independent complaints.

Recommendations:

- **The State party should:**
  - a.) **Establish a complaint mechanism in all prisons and places of detention, including psychiatric institutions, whereby inmates can complain of ill-treatment by prison officials and their complaints are forwarded to the relevant public authority for action.**
  - b.) **Immediately implement a review policy to address issues on the legality of continued detention for persons with mental illness.**

23. According to information before the Committee, the holding cells in Spanish Town which are ten by ten feet were designed to hold fifty (50) detainees but now hold an average of one-hundred and thirty-eight (138) detainees. Please specify the measures that have been taken, if any, to address the problem of deteriorating prison conditions, overcrowding, attempted suicides and abuse in detention and prison facilities particularly in holding cells in Spanish Town and Hunts Bay police stations where detainees share dark, unventilated, damp and dirty-cramped cells.

119. When the Office of the Public Defender (OPD) attempted to visit several prisons to examine the state of police lock-ups, OPD personnel were met with resistance and barred from accessing the cells at the Hunts Bay Police Station in Kingston. Phone calls to the Commissioner of Police initially resulted in him granting access only after 48 hours notice had been given to the stations,<sup>88</sup> however the stipulation was later withdrawn due to OPD objections.<sup>89</sup> Within a week of the incident at Hunts Bay, another member of the OPD received a death threat that stipulated the inspector would be killed if they came to inspect the Spanish Town police lock-up.<sup>90</sup>

120. These incidents point to a major and on-going problem with police oversight. The OPD has been heralded by the Government (in its response to question three) as one of the main organizations responsible for enhancing, promoting and protecting human rights, particularly as it relates to cases where there may have been an infringement on a person's constitutional right. If even the OPD cannot gain access to inspect detention conditions, it speaks to the troubling and systemic concerns in ensuring the rights of detainees are ensured.

121. While there has been little to no movement by the Government to address the horrendous conditions in the prisons, Stand Up for Jamaica is encouraged by the progress being made in the rehabilitation programs. Whereas there were previously none, the Commissioner of Corrective Services has now committed to implementing programs in four (4) prisons around the island.<sup>91</sup>

24. According to information before the Committee, there is no segregation in detention and prison facilities between juveniles and adults, persons on remand and convicts. Reportedly, juveniles are often subjected to abuse, violence and rape. Please explain the measures taken, if any, to ensure that suspects on remand and convicts on the one hand, and juveniles and adults on the other hand, are separated in detention and prison facilities. Please provide further information on the steps taken to ensure that alternative measures to detention are used in addressing juvenile crime, such as diversion, probation, counselling, community service or suspended sentences.

122. Despite the Government of Jamaica's promise to ensure that children would be removed from adult detention facilities, the reality is that children continue to be held along with adults. The new facility which was opened in June 2011, which is for the detention of male juveniles only, will not deal effectively with the numbers of children being held in facilities alongside adults by reason of being in conflict with the law or due to their need to civil protection.

---

<sup>87</sup> United Kingdom Border Agency (UKBA). (May 2011). *Jamaica Country Report*.

<sup>88</sup> Public Defender jail probe being met with resistance. (01 Sept 2010). RJR News. Available via <http://rjnnews.com/news/local/public-defender-jail-probe-being-met-resistance>

<sup>89</sup> Ellington backtracks. (08 Sept. 2010). RJR News. Available via <http://rjnnews.com/news/local/ellington-backtracks>

<sup>90</sup> Public Defender's representative threatened. (09 Sept. 2010). RJR News. Available via <http://rjnnews.com/news/local/public-defenders-representative-threatened>

<sup>91</sup> Stand Up for Jamaica. (2011).

123. The Child Care and Protection Act, section 67-68, prohibits children being held in detention and lock-up. Despite this, the Office of the Children's Advocate reported to Parliament in 2009 that it was unable to remove children removed from Police lock-ups in a timely manner and asked for guidance from Parliament as to solutions.<sup>92</sup> JFJ has received reports (including from police officers) that even when the police attempt to have officers from the Child Development Agency (the government body in charge of children in State care) retrieve children who have been detained, the CDA fails to do so. This thereby "forces" the police to keep them housed with adults. By its failure to ensure that the agencies of the state act in accordance with the law the Government of Jamaica is in contravention of its own national legislation in matters of children.

124. Prior to the opening of the Metcalfe Street Juvenile Remand Centre, Jamaica had between 75 and 125 juveniles held in Police lock ups monthly,<sup>93</sup> this despite orders by the Prime Minister in 2009 to have them all removed.<sup>94</sup> Some were as young as fourteen years old. Despite the opening of the Metcalfe Street Juvenile Remand Centre for boys in June 2011, as of September 3, 2011, 28 children remained in police lockups, some simply in need of care and protection. Additionally, juvenile females are routinely housed in the adult female prison of Fort Augusta and juvenile male and female remandees are routinely held at the Horizon Remand facility. The Horizon Remand Centre was built to hold adults on remand before the determination of their matters and is completely unsuitable for the housing of juveniles. Fort Augusta female prison is for the housing of adults and the juveniles who are sent there are not effectively prevented from interacting with adult female convicts.

125. In addition to the unacceptable housing of children in detention with adults, the conditions in which the children are held in adult lock-ups are deplorable. A recent newspaper article highlighted filthy conditions at several police stations including Moneague in St. Ann, Half-Way Tree and Admiral Town in Kingston, and Glengoffe in St. Catherine.<sup>95</sup> One investigating officer described the situation: "filthy is a mild descriptor when referring to the state of the toilet and bathing facilities at the police lock-up...the continued holding of children in these run-down, dilapidated police lock-ups is a breach of the rights and well-being of children."<sup>96</sup> The inspector went on to describe the cells as "furnaces by daytime and a freezer by night." In a separate OCA report, an investigator reported children to have contracted fungus from the conditions in cells and from sleeping on the cold concrete, and complain of roaches crawling over them during the day and night.<sup>97</sup>

126. A newspaper report quoted an Office of the Children's Advocate investigative officer as saying of the children housed in these conditions: "Most are broken, they are very sad and express the desire to go home. Keeping them in lock-ups, sometimes being locked down for 24 hours is a clear violation of their basic rights, especially those who are detained because they are deemed uncontrollable."<sup>98</sup>

127. There have been outcries from human rights organizations, and on different occasions members of the political directorate have made promises to remove the children from these conditions, however, beyond the building of Metcalfe Street Remand, there have been no concrete steps taken to ensure that suitable facilities are developed to prevent the continuation of these unacceptable practices.

128. The government is failing miserably to satisfy the international standards with regard to the treatment of children particularly those vulnerable to abuse, in particular Article 37 and Article 24 of the Convention on the Rights of the Child.

Recommendations:

- **The State party should:**
  - a.) **Immediately take action to separate children in need of care and protection from those accused and/ or convicted of crimes by placing them in new centres build for that purpose or in rehabilitated alternative places of detention.**
  - b.) **Ensure that the detention of children is the last resort and for the shortest possible time in keeping**

---

<sup>92</sup> The Office of the Child's Advocate, Annual Report, 2008-2009.

<sup>93</sup> The Office of the Children's Advocate. (Feb. 2011). A Study on the Profile of Children in Conflict with the Law in Jamaica. p. 49.

<sup>94</sup> Jamaica Observer. (14 Nov. 2010). Children languish in adult lock ups despite PMs decree. Available via [http://www.jamaicaobserver.com/Children-languish-in-adult-lock-ups-despite-PM-s-decree\\_8137597](http://www.jamaicaobserver.com/Children-languish-in-adult-lock-ups-despite-PM-s-decree_8137597)

<sup>95</sup> Jamaica Gleaner. (6 March 6 2011). Juveniles Held In 'Pigsty' Cells. <http://jamaica-gleaner.com/gleaner/20110306/lead/lead8.html>

<sup>96</sup> Ibid.

<sup>97</sup> Ibid. See also, Office of the Children's Advocate (OCA) Special Report to Parliament on Children in Lock-ups (19 January 2010).

<sup>98</sup> The Gleaner. (21 Feb. 2010). *Who really cares for our children?*

**with the requirements of the UN Convention on the Rights of the Child**

- c.) Define terminology within the Child Care and Protection Act – which categorizes children as ‘uncontrollable’.**
- d.) Take the necessary measures to improve the quality and speed of the juvenile justice system.**

25. According to information before the Committee, on 22 May 2009, seven (7) inmate girls died in a fire at the Armadale Juvenile Correctional Centre. According to the report by the Armadale Commission of Inquiry, the fire broke out when police negligently threw a teargas canister into the locked dormitory after girls had attempted to escape. Please provide information on the measures taken to hold accountable the police officers that were responsible for the death of the seven (7) girls and those injured during the fire. Has the State provided any compensation to relatives of the victims? Please further explain the measures taken, if any, to implement the recommendations contained in the Keating Report on the reform of Children’s homes and Places of Safety.

129. The Report on the tragedy at Armadale illustrates the intolerable degree of human rights abuses to which all the girls in the center were subjected and most cruelly felt by those who died there. The report also details other instances of abuse occurring in other homes run or supervised by the Government of Jamaica. At the enquiry that followed the tragedy, the deplorable and abusive detention conditions of all the young girls were brought to light. An incredible number of breaches of proper security and living conditions were revealed by the sworn testimony given at the Commission.

130. While the Government has accepted responsibility for negligence and has agreed to compensate the victims, to date this has not happened. Their position is that there continues to be an investigation into the matter, but it is difficult to understand what these investigations may be centred upon given the outcomes of the inquiry. We are aware that one police officer has been criminally charged in relation to the event, however, we would hope others (particularly those with responsibility in the department of corrections) will be charged due the extent of rights violations that were documented by the Commission of Enquiry. The incident at Armadale and the events leading up to it speak to the gross negligence of the State to protect the rights of children, especially in relation to the State’s obligations to Articles 2, 6, and 10 of the Covenant.

131. The 2004 Keating Report found that the children were subjected to a wide range of abuses in state run homes, such as neglect of those who attempt suicide and reports of sexual and physical abuse by staff. Despite the findings and recommendations of that report and notwithstanding the establishment of the Child Development Agency<sup>99</sup> there has been little progress on the implementation of the recommended changes. In July 2008, the CDA made a special report to the Minister of Health regarding the progress that the Agency had made in implementing the recommendations arising from the Keating Report. Jamaicans for Justice has investigated many of the claims and found that they amount to little more than a bureaucratic paper pushing and are failing to address systemic weaknesses which allow abuse of children in the care of the state to continue unabated.

132. Eight (8) years after the Keating Commission children in the care of the State of Jamaica continue to be subjected to neglect, gross mistreatment and physical, sexual and psychological abuse (amounting in some instances to the severity of torture) at the hands of its agents, or through gross neglect on the part of its agents. The Jamaican State has continued, through its policies and practices, to allow children in its care to be in grave danger of abuse of their person and their rights.

Recommendations:

- **The State party should:**
  - a.) Conclude a thorough, effective, and impartial investigation into the events resulting in the deaths of the seven young people detained at Armadale;**
  - b.) Ensure that the DPP renders a decision/ruling in relation to the charges for the criminal responsibility of all those implicated as being responsible for the deaths of the children and young people;**
  - c.) Ensure that the alleged perpetrators are brought before a court and held accountable by a tribunal that adjudicates fairly on the matter and imposes an appropriate punishment on those convicted.**
  - d.) Immediately implement ALL recommendations arising from the Keating Report.**
  - e.) Establish minimum qualification standards for employees working with children.**

---

<sup>99</sup> Refer to report: Jamaicans for Justice. (2009). Report on the Situation of Children in the Care of the Jamaican State. Presented to the IACHR in November 2009.

## ACCESS TO JUSTICE (ART.14)

26. According to information before the Committee, the judiciary is overly burdened, with a backlog of over 400, 000 cases leading to inordinate delays in the delivery of justice. Please explain the steps taken to implement the Jamaican Justice Reform recommendations which seek to eradicate a number of the negative factors impacting on the justice delivery system in the State party. Furthermore, please comment on the measures taken, if any, to improve legal aid representation which is hampered by shortages of lawyers available to serve as duty counsel.

133. The legal system continues to be overburdened and subject to delays. Court users experience difficulty utilizing the legal aid system which often results in further delays due to the limited number of Attorney's available to represent under the scheme. The main concerns in relation to the scheme relate to the Governments failure to pay Attorneys for work completed. Thus it is submitted that the situation has not significantly improved since the Third Periodic Report.

134. Although the State of Jamaica has stated a commitment to implement the recommendations of the Justice Reform Task Force, it has not amounted to significant improvement in the more than three years since that commitment was given and there continue to be major delays in ensuring equal access to justice to all persons under Jamaican jurisdiction. Most notably there are delays of many years for Coroners Court matters.

135. The Coroners Court, like the rest of the judicial system, is overburdened and thus slow in completing its mandate effectively. The establishment of the Special Coroners Court was a welcome improvement to the Coroners Court system within Jamaica. However, since the Special Coroners Court has been in place, the shortcomings in relation to the resources available to that office have become increasingly evident. The Special Coroner is presently well beyond his capacity to deal with all the fatal shooting cases that have occurred within Jamaica over the relevant period.

136. Given the fact that the Special Coroner is specifically mandated to inquire into the deaths of individuals killed by the State Agents, provisions should be enacted to ensure higher minimum standards of review are present in matters before the Special Coroner, where the right to life is engaged. In accordance with the Committee's General Comment 6 on the Right to Life<sup>100</sup> it is imperative that the Government of Jamaica "take measures not only to prevent and punish the deprivation of life by criminal acts, but also prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity."<sup>101</sup>

137. The lack of legal aid for civil remedies, which disproportionately affects those coming from socio-economically deprived urban communities, and the limited number of lawyers available under the legal aid scheme, continues to be a major concern particularly in situations where people stand to lose their liberty. We are aware of cases in the Resident Magistrates Courts where Judges proceed to hear cases where there is no lawyer present to represent the defendant. Based on UN Protocol for lawyers, prosecutors, and law enforcement officials, the current practices in Jamaica are seriously inconsistent with the guidelines and fair trial standards and norms.

Recommendations:

- **The State party should:**
  - a.) **Provide adequate resources to the Special Coroner to ensure that the office can effectively carry out its legal mandate and ensure Covenant rights pursuant to Article 14 are adequately protected**
  - b.) **Implement the recommendations pursuant to the Justice Reform Task Force**
  - c.) **Provide the Legal System with adequate resources to effectively ensure all persons are able to benefit from adequate legal aid representation and ensure legal aid lawyers are available in all matters where fundamental Covenant rights are determined.**
  - d.) **Implement minimum standards of review in relation to the consideration of matters before the Special Coroners Court where the right to life is engaged.**

## DISSEMINATION OF INFORMATION RELATING TO THE COVENANT AND THE OPTIONAL PROTOCOL (ART.2)

29. Please provide information on the steps taken to disseminate information on the Covenant, the submission of the

<sup>100</sup> General Comment 6 The Right to Life – Article 6 CCPR 16<sup>th</sup> Session 1982. Paragraph 3

<sup>101</sup> Ibid



third periodic report of the State party, and its forthcoming examination by the Committee. Please also provide information on the involvement of representatives of ethnic and minority groups, civil society, non-governmental organizations, and the national human rights institution in the preparatory process for the report

138. We are unaware of any steps being taken by the Government to disseminate the information stated above. Further, although the government alleges the involvement of Jamaican civil society, for example, in their UPR submission, only two meetings actually took place. In the first meeting, the Government informed civil society of the upcoming UPR review and their planned consultations. However, when the second meeting took place, it was only to ask civil society to comment (with a deadline of one week) on the already drafted government report.

139. However, we have undertaken to disseminate information to the Jamaican public as recommended by OHCHR best practices. Such activities include radio programmes discussing the Universal Periodic Review (UPR) and why these relate to everyday Jamaicans; utilizing websites to publicize UPR recommendations; conducting trainings to the public; and working together as like-minded organizations in the fight to attain human rights for all Jamaicans.

Recommendations:

- **The State party should:**
  - a.) **Involve civil society in the drafting process of the state report on the ICCPR. It should also raise public awareness about the state reporting procedure and the outcome of the State Report Review, including the follow-up to the Concluding Observations.**

## Annex A: FURTHER INFORMATION & CASE STUDIES ON LIST OF ISSUES

---

### Abbreviations:

CDA	Child Development Agency
CIDA	Canadian International Development Agency
DPP	Director of Public Prosecutions
EPMWA	Equal Pay for Men and Women Act
IACHR	Inter-American Commission on Human Rights
INDECOM	Independent Commission of Investigations
JCF	Jamaican Constabulary Force
JDF	Jamaica Defence Force
JFJ	Jamaicans for Justice
J-FLAG	Jamaica Forum of Lesbians, All-Sexuals and Gays
LGBTI	Lesbian, gay, bisexual, transsexual, intersex
NPGE	National Policy for Gender Equality
ODPP	Office of the Director of Public Prosecutions
OPD	Office of the Public Defender
PPCA	Police Public Complaints Authority
RGD	Registrar General's Department
STATIN	Statistical Institute of Jamaica
WROC	Women's Resource and Outreach Centre

### NON-DISCRIMINATION, AND EQUAL RIGHT OF MEN AND WOMEN (ART. 2(1), 3, AND 26)

#### Question 4:

Amnesty International, in its 2008, 2009 and 2011 reports on human rights in Jamaica, describes the presence and perverse effects of discrimination by the Police towards low-income Jamaicans, especially those from the inner-cities.

Policing of inner-city communities has been largely conditioned by a view that criminalizes entire communities. This prejudiced perception has given rise in a number of instances to a tolerance of excessive use of force by the security forces. However, far from increasing protection from violent crime, such policing methods have exacerbated the public security problem.<sup>102</sup>

There are widespread reports of bias, corruption and discrimination by police officers against people living in the inner cities. There are also persistent allegations of ill-treatment and arbitrary detention.<sup>103</sup>

Where the authorities have provided services, they have frequently done so in a discriminatory way. Both administrations have deliberately favoured their political supporters in return for their loyalty. This has contributed to the creation and persistence of garrison communities, reinforcing social exclusion.<sup>104</sup>

The Inter-American Commission on Human Rights (IACHR) has also stated the dispensation of justice in Jamaica appears to be influenced by the socio-economic status of those with whom it is interacting.

The Commission received consistent reports that the police and judiciary frequently treat persons from socio-economically disadvantaged sectors of society with discrimination and disrespect. Sources reported on specific initiatives of both the state sector and civil society aimed at improving this situation, but it remains a severe problem. Justice is administered with one standard for the rich and another for the poor.<sup>105</sup>

#### Question 6:

Family, friends, neighbours, landlords, healthcare workers and even the police perpetrate discrimination against LGBTI persons:

---

<sup>102</sup> Jamaica: A Long Road to Justice? Human Rights Violations Under the State of Emergency, AMR38/002/2011

<sup>103</sup> Public Security Reforms and Human Rights in Jamaica, Amnesty International, AMR38/001/2009

<sup>104</sup> Let Them Kill Each Other: Public Security in Jamaica's Inner Cities, AMR 38/001/2008

<sup>105</sup> Preliminary Observations on the Commission's Visit to Jamaica, 2008

- (a) On April 7, 2010, four gay men who participated in an HIV/AIDS Walk for Tolerance were forced to flee their communities after the media branded it as a gay march. One man fled after his brother held him at gunpoint and another two did so after their homes were stoned. There have also been numerous home invasions, which have left a number of homosexuals homeless.
- (b) In February 2004, a father who suspected his son was gay went to his son's high school (Dunoon Technical) and encouraged students to beat him. The student was assaulted before being rescued by police, who were also attacked by the angry students.<sup>106</sup>
- (c) There have also been numerous reports of bullying of alleged gay students at secondary schools and at well-known teacher training institutions. For example, two incidents occurred at the Mico University College between December 2010 and January 2011.<sup>107</sup> In the first instance, the student had to flee for his life after a recording of him in an intimate conversation with a student posing as gay was broadcasted throughout the school. The other student had to remain locked in his dorm room on the advice of the school's administration when some vigilante classmates made threats on his life. The lack of response by these institutions raises a concern as to the impact it will have on Jamaica as these newly trained teachers go out in the society.
- (d) On June 23, 2008, a woman who was identified publicly as a lesbian by another woman was stabbed in Half Way Tree, St. Andrew at least five times leaving her with a collapsed lung and having to be hospitalised for several days.
- (e) In August 2008, in Clarendon a male suffered burns on over 60% of his body when the house he was renting was fire bombed late one night with him inside.

The Caribbean Review of Gender Studies, a publication of the University of the West Indies (UWI), highlighted that almost thirty gay men were murdered between 1997 and 2004 in Jamaica because of their sexual orientation.<sup>108</sup> This includes the murder of Brian Williamson in 2004, the public face of J-FLAG at the time. It also includes Honourary Consul to the British High Commission in Jamaica, John Terry in 2009.

As per paragraph 43, lesbians are regularly subjected to human rights violations. The following are just two examples of the extreme violence experienced by lesbians:

- (a) For example, in September 2010, there were two reported cases of such gender-based sexual violence. In one instance, four men raped a woman and used a knife to cut her so she could better 'tek man'. None of these rapes used condoms. Unfortunately, as a result of Jamaica's "poor record in dealing with sexual violence against women and children [...] and the prejudicial/discriminatory way in which it deals with sexual violence, which is the second leading cause of injury to Jamaican women,"<sup>109</sup> lesbians either do not report or if they do, they hide the motive for, and detail of, the assault.
- (b) Vanessa Campbell was raped and murdered on November 19, 2010. Both her brother and mother have established the motive as being her sexuality based on her own many accounts of verbal harassment she received prior to the incident. The man identified for the murder has been arrested and charged.

## STATE OF EMERGENCY (ART. 4)

### Question 7

A poignant reminder of the experience of those killed and those left behind is captured in the story of Sheldon Gary Davis.

#### *Sheldon Gary Davis*

<sup>106</sup> [http://www.jamaicaobserver.com/news/55968\\_Father-encourages-students-to-maul-gay-son-at-Dunoon-Tech](http://www.jamaicaobserver.com/news/55968_Father-encourages-students-to-maul-gay-son-at-Dunoon-Tech)

<sup>107</sup> <http://www.jamaica-star.com/thestar/20101223/news/news1.html>

<sup>108</sup> Wahab & Plaza. (2009). Queerness in the Transnational Caribbean-Canadian Diaspora. Caribbean Review of Gender Studies. Issue 3, p.2.

<sup>109</sup> Planning Institute of Jamaica. (2009), p.116

Paulette Wellington reported that her 29 year old, physically challenged son Sheldon was killed by police on Sunday May 30, 2010. The security forces came to her house to search about a week after everything had finished in Tivoli. It was around 10 a.m. They asked to speak with her son and she allowed them. They questioned Sheldon about being a “shotta” due to his walking with a limp, but he denied any involvement. Paulette explained that he mostly stayed in the house because of his physical disability. They accused her of talking too much and said they wanted to check him out and took him with them. Paulette reports there were about 30 soldiers interrogating Sheldon. Less than an hour after he left, she heard gunshots on the other side of the building. When Sheldon did not return, Paulette and her family searched for several days. She eventually discovered her son had been killed the same day he had been taken - at the blood bank around the corner from her house. It was reported that he was killed after he attempted to grab a soldier’s gun. However, witnesses (who were too afraid to give statements) gave a different account for what happened to Sheldon. Watch Paulette’s story on <http://www.youtube.com/watch?v=9kWEIVHlj5Y>.

The effect of the State of the Emergency on children is a serious issue for consideration as well. Reports were received about children who were forced to sit their final examinations during the Emergency without recognition of the mental trauma arising from the events in their neighbourhood. According to a research report by the Economic Commission for Latin America and the Caribbean (ECLAC), the number of student affected were 351 or 2.8% of high school students writing the Caribbean Advanced Proficiency Examination (CAPE), and 1877 or 2.4% of high school students writing the Caribbean Secondary Education Certificate (CSEC).<sup>110</sup> Two schools (Kingston High School and Tivoli Gardens High) reported to the Overseas Examinations Commission that the exam candidates were agitated. However, instead of rescheduling the exams, the sittings were relocated to other locations. By continuing ahead with the examinations, children’s right to education was seriously impeded. It also indicated the Governments’ failure to understand the serious psychological problems, trauma, and impact of the incursion on children. The ECLAC report indicates that attendance levels at West Kingston schools were lower than usual during this time period, however the government has made no effort to further examine how test scores and passing of grades were impacted by the State of Emergency events.

## **RIGHT TO LIFE (ART.6)**

### **Question 8**

#### ***Mickey Hill***

The shooting death of Mr. Fredrick Malcolm ‘Mickey’ Hill at the hands of the police on Thursday November 4, 2010, in the tourist resort town of Negril, caused outraged in Jamaica and Internationally. Mr. Hill was well known to locals and tourists alike as a decent, hardworking Jamaican businessman who had worked in the tourist industry for over twenty years. According to numerous eyewitnesses Mr. Hill was confronted by a group of seven or eight policemen, some wearing masks or with ‘kerchiefs’ tied over their faces, who arrived in a Police Bus. They demanded that he tell them what was in a plastic bag he was carrying. In the process of showing them the contents of the bag (cornmeal and condensed milk) the police opened fire and Mr. Hill was shot at least three times at point blank range. He died on the spot. Other persons in the vicinity were menaced with guns by the police and ran away. Another group of Policemen removed Mr. Hill’s body to the back of a police jeep, while the original police party got back in the police bus and drove away. Mr. Hill operated the local and very public business place where the shooting took place. Although all of the eyewitnesses refute the presence of gunmen on the premises and all claims that Mr. Hill may have had a firearm, the police report finding a gun.

#### ***Ian “Chin-Sing” Lloyd***

On July 30, 2010, Mr. Lloyd was shot and killed by Detective Sergeant Lloyd Kelly while he lay on the ground incapacitated. The post mortem report on the body of Ian Lloyd indicated that he was virtually crippled when police shot him. The DPP has ruled on the matter and Det. Sgt Kelly has since been charged with murder. For more information see <http://www.youtube.com/watch?v=MC54pcNNaR0>.

In the case of Mickey Hill, it is important to note the accused police officer was also implicated in a separate incident previous to the murder of Mr. Hill. If the officer had been interdicted (or placed on disciplinary leave from front line duty), this incident may have been avoided. It is therefore strongly recommended that the Government institute measures to relieve accused police officers from the line of duty until their case is duly processed.

---

<sup>110</sup> Economic Commission for Latin America and the Caribbean (ECLAC). (2010). Report of the Macro Socioeconomic Effects of the Events in Western Kingston area, 22 May -7 June 2010.

## Question 11

### **Maurice Tomlinson**

On March 21, 2011, the IACHR granted precautionary measures for Maurice Tomlinson, in Jamaica. The request for precautionary measures alleges that Maurice Tomlinson is facing a situation of risk due to his work as a defender of the rights of lesbian, gay, bisexual, trans, and intersex (LGBTI) persons in Jamaica. It indicates that he has been receiving death threats via e-mail, and that the State authorities have not adopted protection measures. The Inter-American Commission asked the State of Jamaica to adopt, in agreement with the beneficiary, the necessary measures to guarantee his life and physical integrity, and to inform the IACHR on the steps taken to investigate the facts that led to the adoption of these precautionary measures.

## **PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ART. 7)**

### Question 15

Excerpt from Paragraphs 55-57 of: *Jamaicans for Justice & the George Washington University Law School*. (25 March 2011). *The State of Human Rights in Jamaica since the State of Emergency 2010*. Report to the Inter-American Commission on Human Rights.

*Since July 2009, JFJ has been lobbying the Police Services Commission (PSC), the body charged with responsibilities to include the hiring and firing of police officers, and the Commissioner of the JCF in an attempt to initiate investigations into credible reports of gross Human Rights violations of citizens by Superintendent Hewitt. JFJ has filed a Request for Precautionary Measures with this Commission against Supt. Hewitt and on behalf of the citizens in the Kingston Area 4.<sup>111</sup> To date, there has been no substantive response to the information, provided to the PSC and JCF about Supt Hewitt. It has recently come to the attention of JFJ that Superintendent Hewitt is in line for a promotion in the force despite his glaring record of police misconduct.*

55. The Petition submitted to this Commission highlighted the egregious Human Rights violations reportedly committed by Superintendent Hewitt and his team which include fourteen (14) fatal shootings, four (4) cases of threats, assaults and harassment, two (2) injury shootings and one (1) case of perversion of justice. Since that submission to this commission, there have been numerous other reports received by JFJ regarding the outright abuses of the Human Rights citizens by Delroy Hewitt and officers under his control.
56. Supt. Hewitt was also singled out for special attention by the Special Rapporteur in the 2010 report on his visit to Jamaica. On his visit to the Hunts Bay police station, the Special Rapporteur reports:

Most of the officers, above all Superintendent Hewitt Delroy, were very obstructive, uncooperative, aggressive, and openly threatened the Special Rapporteur's team during the visit. Although the lock-up was not operative, the Special Rapporteur encountered a man in the —Interview Room || who was apparently very scared. According to the officers, he had been detained and taken to the police station by a mobile police brigade, but there were no record about who had taken him and who had received him. Since the lock-up was out of operation, there was no custody register book. The Special Rapporteur's overall impression confirmed the extremely bad reputation of this police station. The Special Rapporteur strongly urges the Government to take disciplinary measures against Superintendent Hewitt Delroy for having obstructed and aggressively threatened the Special Rapporteur and his team.<sup>112</sup>

57. JFJ has and continues to beseech the Commissioner of Police and the PSC<sup>113</sup>, without success, to actively investigate the complaints of Human Rights abuses against Supt. Hewitt. JFJ has taken a public position<sup>114</sup> to strenuously oppose any attempt by the JCF high command to promote Supt Hewitt who currently is under

---

<sup>111</sup> Request for Precautionary Measures against Jamaica Constabulary Force Member; Superintendent Delroy Hewitt, Agent of the Government of Jamaica on behalf of Citizens in Area 4, Kingston and St. Andrew.

<sup>112</sup> Supra Note 19, Para 65 at page 33.

<sup>113</sup> JFJ Letter to Police Service Commission. (Nov. 2010; JFJ Press Release. (12 Jan. 2011). One in Five Killings in Jamaica Committed by Security Forces.

<sup>114</sup> JFJ Press Release. (12 Jan. 2011). One in Five Killings in Jamaica Committed by Security Forces.

investigations.

## **RIGHT TO LIBERTY AND SECURITY OF PERSON AND TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY (ART. 9 AND 10)**

### **Question 21**

**Table:** The Constabulary Force (Interim Provisions for Arrest and Detention) Act 2010. Data for July 2010 to June 2011.

<b>POLICE DIVISION</b>	<b>NO OF PERSONS HELD</b>	<b>NUMBER OF PERSONS CHARGED</b>	<b>LENGTH OF TIME HELD BEFORE BEING CHARGED</b>	<b>LENGTH OF TIME HELD BEFORE BEING TAKEN TO COURT</b>	<b>LENGTH OF TIME HELD BEFORE RELEASE</b>
St. Andrew Central	4371	1619	3-7 days	7-28 days	2-3 days
St. Andrew North	700	615	14 days	Between 5-10 days	Between 3-10 days
St. Andrew South	857	364	Average 5 days	Average 7 days	
Kingston Central	1942	1066	5 days	7 days	8 days
Kingston Eastern	1288	735	4-5 days	1-2 days	3-4 days
Kingston Western	1693	989	4-5 days	6-7 days	5 days
St. Catherine South	539	136	Average 5 days	Average 5 days	3 days
St. Catherine North	466	168	Average 5 days	Average 5 days	3 days
St. James	1166	562	Average 5 days	Average 5 days	3 days
Clarendon	288	70	Average 5 days	Average 5 days	3 days
St. Thomas	65	30	Average 25 days	Average 14 days	7 days
St. Elizabeth	61	29	3 days	3 days	3 days
Manchester	1488	764	3-5 days	3-5 days	3 days average
Westmoreland	244	93	7-10 days	2-3 days	3-5 days
Hanover	360	160	5 days	8 days	10 days
Trelawny	410	165	5-8 days	8-10 days	10-12 days
St. Mary	153	67	4 days	5 days	4 days
Portland	5	5	6 days	8 days	14 days
St. Ann	33	33	1.7 days	1.7 days	0.8 days

## **ACCESS TO JUSTICE (ART.14)**

### **Question 26:**

There have also been instances of members of the public being barred from attending public court hearings, without good reason and with the complicity of public authorities. There have been instances of which we are aware of a parent of a child killed by State Agents, notably the Jamaica Constabulary Force, not being permitted to attend the trial of the alleged perpetrators of the fatal shooting due to the procedure and practice of closed Gun Courts.

**ANNEX B: CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS**

AVAILABLE ONLINE ON THE HUMAN RIGHTS COMMITTEE WEBPAGE.

**ANNEX C: JAMAICAN JUSTICE SYSTEM REFORM TASK FORCE**

AVAILABLE ONLINE ON THE HUMAN RIGHTS COMMITTEE WEBPAGE.