

**Submission from
Jamaicans for Justice (JFJ)**

**For consideration in the formulation of the
List of Issues by the Human Rights Committee's Task Force
during the 100th Session
(11-29 October 2010)**

**United Nations Human Rights Committee
100th UNCHR session,
Geneva, Switzerland
October 2010**

STATE OF JAMAICA

NGO REPORT On the implementation of the ICCPR (prior to the adoption of the List of issues)

INTRODUCTION

1. Jamaicans for Justice is a non-profit, non-partisan, non-violent volunteer citizens' rights action group founded in 1999. It works to bring about fundamental change in Jamaica's judicial, economic, social and political systems in order to improve the present and future lives of all Jamaicans.

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GENERAL OBSERVATIONS

2. Jamaicans For Justice can safely say that the main achievement and best practices of the Jamaican government, in the last decade, have been to seriously examine its deficiencies in the areas of public security, human rights and children's rights. However, the real challenge that faces the Government is to go beyond analysis and to implement the

proposed solutions, to find the political courage and the financial resources to prioritize what must be contended with and to arrive at the achievements of the recommended changes.

3. Jamaicans for Justice finds it disappointing that the report provided to the Council by the State gives useful information on legislation in Jamaica by quoting existing laws but fails to address the state of implementation of these laws and of the Covenant. The report also fails to consistently address, on an article-by-article basis, the difficulties encountered in the course of such implementation.
4. Also, we consider it disingenuous and unfortunate that such a report refers to several items that are not actual enactments of legislature but merely “drafts” or proposed legislation. Good intentions, plans and projects are not sufficient material, in our view, to be submitted before the HRC for review.

SPECIFIC PROVISIONS OF THE COVENANT

ARTICLE 2 (Non-Discrimination, Constitutional and Legal Framework within which the Covenant is Implemented and Access to Remedies)

THE CHARTER OF RIGHTS

5. In its Concluding Observations (1997), the HRC noted:

The Committee appreciates that in the envisaged review of the Jamaican Constitution, any provisions in contradiction with the Covenant which might appear from the application of section 24 of the present Constitution, would be eliminated. It expresses the hope that the recommendation of the Constitutional Commission to the effect that the new Bill of Rights should explicitly refer to prohibition of discrimination on the grounds of sex will be implemented as part of this legislation.

CCPR/C/79/Add.83, para. 4

6. It is frustrating, but essential, to note that, 13 years later, not only has this prohibition of discrimination not been enacted but that the said Bill of Rights is yet to be adopted by the Government of Jamaica. Since that time, the Charter of Rights Bill has languished before Parliament and various Joint Select committees. Various drafts have been presented to Parliament, each reflecting changes based on arguments presented to and within the Joint Select Committee. Between 2002 and 2008 submissions on various drafts of a Bill entitled “Charter of Rights” have been heard sporadically and modifications to drafts continued to be made until 2009.
7. The issue of the Charter of Rights and Freedoms is of national concern and critical to regulating the relationship between the Jamaican people and the government. The proposed Charter of Rights falls well below what civil society expects of it.

Deficiencies identified by Civil Society include:

- The proposed Charter of Rights
 - a. not only retains the death penalty; it goes further by excluding the Court's jurisdiction to question whether any pre-existing form of punishment is unconstitutional - i.e. inhuman or degrading punishment. Clause 13(7)
 - b. discriminates against same sex relationships by:
 - i. preserving existing laws that do not recognise same sex unions and explicitly states that these relationships cannot be legally recognised. (Clause 18)
 - ii. preserving the offence of buggery. Clause 13(11)
 - iii. providing the right of persons to communicate with family, 'spouse' etc while they are detained or arrested, but excludes same sex partners and common law unions. Clause 14(2)
 - c. does not oblige judges to consider international human rights instruments when interpreting the Bill
 - d. does not include the right to health care
 - e. makes rights subject to existing laws
 - f. contains several specific exceptions which fail to consider that new circumstances or societal views may arise in the future. E.g. Clause 13(11) 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.
 - g. the Charter 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.

DISCRIMINATION

8. Amnesty International, in both its 2008 and 2009 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.

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.¹

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 exclusion²

¹ Public Security Reforms and Human Rights in Jamaica, Amnesty International, AMR38/001/2009

² Let Them Kill Each Other: Public Security in Jamaica's Inner Cities, AMR 38/001/2008

9. The InterAmerican Commission on Human Rights has also stated that 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 socioeconomically 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.³

ARTICLE 4 (Derogations)

STATE OF EMERGENCY

10. On May 23, 2010, the Jamaican government declared a state of public emergency limited to the parishes Kingston and St. Andrew for an initial one-month period. Sections of the City of Kingston began experiencing civil unrest after the Prime Minister announced the Government's intention to sign the authority to proceed in relation to the United States' extradition request for Michael Christopher Coke otherwise called ("Dudus"). The State of Emergency was declared in the parishes of Kingston and St. Andrew and curfews imposed in sections of downtown Kingston. After the first month the State of Emergency was extended to the parish of St. Catherine. It was extended for an additional month to July and Parliament then refused to extend it further. It ended as of midnight, the 22nd of July 2010.
11. It is troubling to note the following events that took place during the State of Emergency:
- the inadmissible delay in setting up the Emergency Powers Tribunal
 - the lack of any real power of this Tribunal, leading to persons appealing directly to the Minister
 - the Tribunal was held in camera
 - Government lawyers were unprepared
 - blank detention orders were issued
 - Attorneys were given documents in relation to charges which they were not allowed to retain
 - there were reports of police disobeying orders even from the Minister
 - the Minister had so much power, therefore a large potential for abuse
12. JFJ is very wary that the State of Emergency and the Regulations that accompanied it opened more avenues for the human rights of Jamaicans citizens being taken away under the guise of 'fighting crime' in a way that we will regret bitterly in years to come. JFJ is also gravely concerned about the large number of deaths (the official figure is 73 but

³ Preliminary Observations on the Commission's Visit to Jamaica, 2008

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 and the number of allegations of abuse of the rights of citizens by these agents.

13. More than 4,000 Jamaicans were detained under the state of emergency. JFJ's concerns have been raised by the cases received by our offices and media reports of numerous young men being 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.
14. This practice is not a new one in socio-economically depressed communities. It is our concern that the Jamaica Constabulary Force believes that State of Emergency gives 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 the police and the army only entered and operated in inner-city (socio-economically depressed) neighbourhoods, rounding up only and all young men in these areas for the purpose of 'processing'. It is also of particular concern to JFJ that the Regulations accompanying the State of Emergency allowed for prints gotten during the period to be retained for use afterwards.
15. Jamaicans for Justice has compiled and documented a number of potential human rights transgressions in the course of this period of State of Emergency.⁴

ARTICLE 6 (Right to Life)

16. Jamaica in 1975 signed the International Covenant on Civil and Political Rights, but in 1997 resigned from the Second Optional Protocol to that covenant. The death penalty, though still a legally acceptable form of punishment, has not been carried out in Jamaica since in or about 1988. This is partially due to a Privy Council ruling prohibiting the imposition of the death penalty after a convicted person has been on death row for more than five (5) years.⁵ The Privy Council ruled that the imposition of the death penalty after that time amounted to cruel and inhumane punishment. Due to the length of time that it takes for convicted persons to exhaust their avenues for appeal, this Privy Council restriction has been cited as the reason for the failure to carry out any executions since 1988.
17. In fact, the current opposition party (the People's National Party (PNP)) recently threatened to boycott debate on a new Charter of Rights unless the ruling party agreed to a provision in the Constitution that hanging prisoners condemned to death after more than five (5) years does not amount to cruel and inhumane treatment as ruled by the Privy Council in the case of Pratt and Morgan

⁴ Report by Jamaicans For Justice to Mr. Santiago Canton, Executive Secretary, Inter-american Commission on Human Rights, 2010

⁵ *Pratt and Morgan v R* [1994] 2 AC 1; [1993] 3 WLR 995.

DEATH PENALTY

18. We wish to repeat here that the proposed Jamaican Charter of Rights not only retains the death penalty, it goes further by excluding the Court's jurisdiction to question whether any pre-existing form of punishment is unconstitutional - i.e. inhuman or degrading punishment. (Clause 13 (7)) ⁶

EXTRADJUDICIAL KILLINGS

19. In its Concluding Observations (1997), the HRC noted:

The Committee regrets the lack of published information about the alarmingly high incidence of the use of firearms by the police and security forces. Therefore:

The Committee urges the State party to investigate all such incidents and to make available to the public the outcome of such investigations;

CCPR/C/79/Add.83, para. 16

The Committee is concerned that not all cases of death at the hands of the police or security forces are subject to a coroner's inquest. Therefore:

The Committee emphasizes that all such deaths should be inquired into and that inquests ordered under the Coroners Act which are adjourned pending the consideration by the Department of Public Prosecutions of potential charges must be reopened if no prosecution ensues.

CCPR/C/79/Add.83, para. 19

20. In the last decade, an alarming 1963 citizens of Jamaica have died at the hands of the police:

1999⁷	65
2000	149
2001	157
2002	154
2003	128
2004	131
2005	202
2006	229
2007	272
2008	223
2009	253
TOTAL	1963

⁶ Capital Punishment in Jamaica, Independent Jamaican Council on Human Rights, (excerpt)

⁷ Figure for half of the year only

21. Jamaicans for Justice has observed and documented that between 2004 and 2008, 1057 men, women and children have been shot and killed by police under circumstances that, in a substantial percentage of cases, point to summary or arbitrary executions.⁸
22. Statistics confirm that what had been a borderline human rights emergency in 2000 had become, by early 2008, an alarming situation, with nearly a fifth of all murders committed that year having been done so by police authorities. This practice is not just more widespread than ever, it appears now to be systematic as well.
23. One of the principal factors which appears to be fuelling the surge in unlawful police killings is the persistence of impunity, which has traditionally protected perpetrators from prosecution or, where prosecuted, from conviction, in the vast majority of such cases.
24. 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 has been only one conviction for murder by a police officer, in 2006. The conviction was overturned in appeal.

According to the information received by the Commission, **only one police officer has been convicted in recent years for an extrajudicial killing.** Only a minimal percentage of police officers are charged in cases of police killings, and in the cases of those who are tried the process is fraught with obstacles, and usually ends in acquittal.

InterAmerican Commission on Human Rights³

25. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, conducted a mission to Jamaica from 17 to 27 February 2003.

Following her mission, it was the Special Rapporteur's distinct impression that extrajudicial executions by the police, and possibly in a very few cases also Jamaican Defence Forces, had in fact taken place.⁹

26. The Inter-American Commission recognized that “a pattern has been identified in Jamaica whereby a disproportionately large number of killings are associated with the State's security forces, but where very few prosecutions have been undertaken in relation to those killings.”¹⁰

⁸ Killing Impunity: Fatal Police Shooting and Extrajudicial Executions in Jamaica, 2005-2007, Jamaicans For Justice, 2008

⁹ Report of the Special Rapporteur, Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2003/53, E/CN.4/2004/7/Add.2, 26 september 2003

¹⁰ Michael Gayle v. Jamaica, Case 12.418, Inter-Am. C.H.R., Report No. 92/05, OEA/Ser.L/V/II.124, doc. 5 ¶ 88 (2005)

INVESTIGATION BODIES INTO EXTRAJUDICIAL KILLINGS

27. Jamaicans for Justice has thoroughly documented problems of investigative inadequacies and lack of independence that have led to a pattern of impunity for police officers suspected of committing extra-judicial killings of civilians.^{8 11}
28. To the present time there have been two organizations empowered to investigate police shootings. Within the Jamaican Constabulary Force (JCF), the Bureau of Special Investigations (BSI) is responsible for investigating all police shooting incidents, both fatal and non-fatal. The BSI reports to the Commissioner of Police. The Police Public Complaints Authority (PPCA) is an external independent civilian body that investigates complaints against the police. It can also initiate its own investigations.
29. Both of these investigative organizations write reports that they send to the Director of Public Prosecutions, who then decides whether to pursue criminal or disciplinary proceedings, or to send the matter to the coroner's court. Both investigative bodies remain ineffectual in carrying out their duties.
30. Recent newspaper reports suggest that there have been 4,208 incidents involving police personnel between 1999 and July 2010 with 1,849 fatal incidents in which there were 2,157 fatalities documented by the BSI. They report that all the cases have been investigated with 925 cases remaining under investigation.¹²
31. BSI investigations are grossly inadequate. One of the main problems is the delayed arrival of investigators at crime scenes, which provides opportunity for evidence to be contaminated or removed. The UN Special Rapporteur states that "[t]he BSI suffers from some serious inadequacies of investigations into police shootings due to the failure of officers to preserve scenes of violence or crime which destroys valuable evidence"⁹
32. As for the PPCA, JFJ has observed that it has failed to make full use of its powers when conducting investigations, which it initiated in only a small fraction of cases. Government sources explained that the PPCA often relies on the BSI investigations, which suffers from the shortcoming described above.¹¹
33. The UN Special Rapporteur reported that the PPCA is under funded, lacks the resources to conduct its own investigations and lacks the power to ensure that police officers who are requested to give statements do so.
34. The failure of either investigative body to credibly clear or convict police of acting unlawfully leads to significant distrust of the police and the formal justice systems within communities. This in turn leads to alienation of communities from the police and increases the difficulty of controlling crime.

¹¹ "Pattern Of Impunity", Jamaicans For Justice, 2006

¹² New Independent Commission of Investigation, The Gleaner, Edition of August 3, 2010

35. Jamaicans for Justice continues to have, and highlight, a number of concerns with the inefficiencies, unprofessional conduct and repeated failures of these investigative bodies. It contends that, functioning as they currently do, they prove a major disadvantage to the effectiveness of the justice system and to the realization of justice for Jamaican citizens. The problems we have observed and documented include:
- a. Failure or delays, sometimes by days, to visit the crime scene resulting in loss of vital evidence, including from eyewitnesses;
 - b. Failure to preserve crime scenes by prematurely moving bodies;
 - c. Failure to collect evidence, including samples, swabs, clothing or statements from material or eyewitnesses;
 - d. Failure to conduct adequate and complete autopsies often resulting in vital evidence being lost;
 - e. Failure to adequately complete or document autopsies;
 - f. Inadequate and questionable analysis of samples collected;
 - g. Failure to protect vital evidence resulting in it being lost or destroyed prior to trial.
36. The failure to ensure effective, independent and timely investigations whenever police discharge a firearm or when police action results in serious injury or death constitutes an abuse of power and an important cause of impunity in itself. Almost all investigations and prosecutions of fatal police shootings are perfunctory, inadequate, unsatisfactory and do not meet international standards.
37. The Special Rapporteur, in her 2003 report, recommended 13 distinct courses of action for the Government of Jamaica to improve the situation of police accountability, discourage the use of lethal force, investigation of such cases and transparency.⁹ To date, the Government of Jamaica has failed miserably in the implementation of these recommendations.¹³
38. As of July 2010, a new Independent Commission of Investigations has been established by the Government of Jamaica to investigate fatal and other shootings by members of the security forces. It will be staffed by civilian investigators. The commission will replace the Police Public Complaints Authority and will also investigate on allegations of police corruption. The BSI and PPCA are expected to continue their operations for some time under the supervision of the commissioner until the transmission has been completed.
39. JFJ is concerned that this new body will prove as ineffectual in reducing the high rate of fatal police shootings as its predecessor agencies unless the Government provides it with sufficient funding and resources to carry out its work. Additionally the Government will need to ensure the effective functioning of the Courts and the office of the Director of Public Prosecutions.

¹³ Report for UN Special Rapporteur, TR edits 21, Jamaicans For Justice 2005

CORONER'S COURT

With regard to the Coroner's Court, again the Special Rapporteur notes a number of concerns. The Coroner's Court seriously lacks resources - e.g. only one judge deals with the entire Kingston area. The facilities at the Court are also very poor. Penalties for not responding to summonses are very low. Long delays are a common concern and exhaust the complainants and the witnesses. There were complaints about the selection of jurors as well. It was reported to the Special Rapporteur that especially in cases where the police were the accused the same jurors were selected again and again.⁹

40. Jamaicans for Justice has documented the Coroner's Courts being overburdened and operating with inadequate resources which, combined with a myriad of other problems, causes inordinate delays in the delivery of justice. The resulting backlog of cases and miscarriages of justice become abuses of fundamental human rights and must be addressed to arrest the endemic trend of inefficiency, curtail impunity towards the actions of the police, serve justice as it should be served and create confidence in the system as a whole.¹⁴
41. Through the study of the "Bob Woolmer" case, Jamaicans for Justice has highlighted the differences that exist in quality and time spans between cases under investigation. When it comes to ordinary Jamaican citizens having died at the hands of police officers versus the investigation of a well-known cricket coach the difference in the speed and quality of the investigation is marked but some of the results are equally abysmal.¹⁵
42. Among the systemic weaknesses in Coroner's Courts documented by JFJ are:
 - Inadequate frequency of Coroner's Court sessions in rural areas, resulting in a growing backlog of cases;
 - Inadequate number of magistrates, clerks and support staff;
 - Inadequate use of technology, especially in regards to practice of the official notes of evidence having to be hand written by the Coroner;
 - Repeated adjournments leading to the loss of witnesses, evidence and jurors, as well as the possibility of jurors not remembering evidence due to the passage of time;
 - Inability or failure to schedule hearings on consecutive days;
 - Problems with witnesses including an inadequate system of subpoenaing witnesses and reoccurring absences of eyewitnesses, formal witnesses and police witnesses;
 - Inadequate system of subpoenaing jurors and the ensuing problems regarding availability of jurors and the use of regular jurors who sit repeatedly on numerous different cases, often over a period of years;
 - Coroners failing to issue warrants for witnesses, especially police witnesses who are absent without informing the court as to the reason;

¹⁴ "JFJ Delighted with Verdict in the Troy Gordon case": Press release, August 3rd, 2010

¹⁵ Justice Report 2007-2008, The Bob Woolmer Legacy, Jamaicans for Justice, 2008

- Inadequacies of facilities, including: poor signage, lack of parking, sub-standard washroom facilities, unacceptable noise levels in the court, lack of air conditioning, improper lighting and poor access for people with disabilities;
- Poor communication with families of the deceased, including the failure to provide notification of when the inquest will begin and to provide information on the responsibilities and rights of the family members;
- Lack of public knowledge of the processes of the justice system, including Coroner’s Court, and inadequate education campaigns to address the problem;
- Legal aid not available for families with matters before Coroner’s Court, leaving too many Jamaican’s without legal counsel at this important stage of the justice system.^{16 8 11}

43. Although the “Coroner’s (Amendment) Act 2008”, establishes the Office of the Special Coroner, to examine “any death where there is reasonable cause to suspect that death occurred as a result of the act or omission of an agent of the State” (section 5B), no such Special Coroner has yet been appointed by the Government of Jamaica.

ARTICLE 7 (Prohibition on Torture, Cruel, Inhuman and Degrading Treatment)

44. Jamaica has, to date, failed to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This failure is indicative of the treatment by the political directorate of the issue of torture and the general disregard of any reports of the ill – treatment of its citizens by State agents as well as of an apparent reluctance by Jamaica to be bound by internationally accepted standards in this regard.
45. Yet another indication of the government policy towards torture is the recent Parliamentary vote to retain capital punishment and the proposed retention of the savings clause in the Jamaican Constitution which would prevent pre-independence forms of punishments (corporal and capital) from being judged cruel and degrading.

CHILDREN

46. It is of particular concern that one area in which the Government of Jamaica is failing to enforce prohibitions against torture and cruel, inhuman and degrading punishment is in the case of treatment of children in State care.
47. Conducted in 2004, the Jamaican Government’s Keating Report documented that a large number of children are already plagued by personal issues at the time they are admitted to the homes. The Report went on to find, however, that the children are subjected to further abuse in the state run homes, such as neglect of those who attempt suicide and reports of sexual and physical abuse by staff. This abuse of children within state run homes was historically hidden from the public. The Keating report made recommendations for a drastic overhaul of the current system to improve the lives of the children whom the government was under an obligation to care for.⁴⁰

¹⁶ FOR WANT OF A NAIL, Jamaicans for Justice, 2007

48. Despite the Keating Report findings and recommendations the Jamaican State has continued, through its policies and practices, to allow the children in its care 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. This continuing failure by the Government has also been well – documented and has been the basis of several reports by JFJ to the Inter – American Commission on Human Rights (IACHR). (cf. under paragraph 88).
49. These abuses became tragically apparent in the case of the Armadale juvenile correctional facility. In May 2009, seven (7) girls perished in a fire at ARMADALE. This tragedy is illustrated and commented in detail in Jamaicans for Justice’s 2009 Report to the InterAmerican Commission on Human Rights.⁴²
50. At the enquiry that followed this 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 (cf. paragraph 97)
51. Such wanton disrespect for the rights of children and the lack of political will on the part of the Government of Jamaica to assume its responsibilities and to assure the protection of such a vulnerable and innocent part of its society must be seen as a failure to comply to its obligations under article 7 of the ICCPR.
52. The situation exists at such a level that, in 2010, Jamaicans for Justice felt compelled to make a large number of recommendations to the Special Rapporteur on Torture concerning children.¹⁷
53. Another concern for JFJ is the continuing use of corporal punishment, which has been practiced in schools for decades and which means of punishment has allowed teachers to, in some cases, inflict grievous bodily harm on students in their care.

ABUSE OF POWER BY POLICE

54. Police abuse of power and use of excessive force, lack of accountability, corruption within the police force and outright impunity for whatever action the police may take (including killing of innocent citizens being billed as “collateral damage”) have been recognized by the police authorities themselves in numerous reports and have lead to a public security crisis in Jamaica. This situation has been well-documented and analysed by both the government and the national and international NGOs operating in Jamaica, as well as the civil society representatives.^{8 11 18 19 20 21}

¹⁷ Recommendations for the United Nations Special Rapporteur on Torture, Jamaicans for Justice, 2010

¹⁸ Jamaican Justice System Reform Task Force 2007

¹⁹ Road Map to a Safe and Secure Jamaica, The report of the Civil Society Panel, (commissioned by the then Leader of the Opposition, Mr. Bruce Golding), 2006

55. Attempts to control crime have generally involved the use of heavy-handed “crime-fighting” methods including extra-judicial killings, death threats, beatings, torture and ill treatment during questioning or detention by the security forces. Jamaica has resorted to legislative curtailment of rights rather than actions targeted at prevention of crime and upholding the rule of law by all.
56. In 2003, the Special Rapporteur, Asma Jahangir, found ample indications that excessive force had been used by both security and police forces.⁹
57. In 2010, the Special Rapporteur on Torture “found a considerable number of cases, which were corroborated by medical evidence, where persons have been subjected to different degrees of beatings in order to punish them.”²²
58. Amnesty International has documented many cases of police brutality in Jamaica, some amounting to torture. Methods have included beatings, burns with hot irons and mock executions.²

ARTICLE 9 (Prohibition of Arbitrary Detention)

59. Citizens are regularly arbitrarily arrested and detained in Jamaica (cf. paragraph 14). There are equally a large number of unlawful and/or prolonged detentions, people being held without being charged, others forced to attend ID parades without ever being charged²³
60. In a study submitted to the InterAmerican Commission on Human Rights in 2008, the George Washington University’s International Human Rights Clinic summarized thus the shortcomings in detention matters in Jamaica:
 - Most arrests that occur in Jamaica are warrantless, based on the broad powers conferred upon the JCF by Sec. 13 of the Bail Act;
 - There is evidence that the JCF agents can authorize their own arrests, i.e. issue their own warrants;
 - There are no public statistics on detentions in Jamaica;
 - There is no review by a competent judicial authority of the legality of warrantless arrests;
 - Due to the de jure and de facto deficiencies in the detention process, JCF agents as a rule will arrest and detain suspects on minimal or no evidence, in order to conduct their investigation afterwards, which often consists in part or in whole of carrying out line-ups;
 - Once and if charges are brought by police, it is the police themselves who decide bail in most cases not involving murder or treason;.

20 “A New Era of Policing in Jamaica, JCF Strategic Review”, Ministry of National Security - 2008

21 Killings and violence by Police: How many more victims?, Amnesty International, 2001

22 UN Special Rapporteur presents preliminary findings on his mission to Jamaica

23 Detention statistics, Jamaicans for Justice, 2007

- There are no remedies available to detainees within this process other than those reflected in the procedures we've outlined in our original memo; that is to say, none that are adequate or effective.²⁴

CRIME BILLS

61. With the situation leading up to State of Emergency and what appears to be an agreement between all political players that it is time to “get tough on crime”, the Government has recently enacted six crime bills namely:

- An Act to Amend the Offences Against the Person Act,
- An Act to Amend the Parole Act,
- An Act to Amend the Firearms Act,
- An Act to Amend the Bail Act,
- The Constabulary Force (Interim Provisions for Arrest and Detention Act)
- The Bail (Interim Provisions for Specified Offences) Act

Other reform bills, and in particular the proposal to extend the period of detention without bail to 60 days, cause the Commission concern that the serious problems of due process and prolonged arbitrary detention may only be exacerbated.

InterAmerican Commission on Human Rights³

62. Jamaicans for Justice is very critical of the use and effectiveness of these new “Crime Bills”. They have drawn to the attention of the authorities the fact that none of the reports that examined in depth the Jamaican justice system, such as the Justice System Reform Task Force Report, contain any single proposal for the type of draconian, rights curtailing legislation such as that of the ‘crime bills’.

63. JFJ believes that to propose to put further power into the hands of the Jamaica Constabulary Force (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”.¹⁸

64. The documented and reported endemic corrupt practices of the Jamaica Constabulary Force include:

- contract killings and torture;
- engaging in or with criminal organisations;
- extortion;
- perjury;
- alerting criminals of JCF plans for interdiction;
- failing to attend court as a witness;

²⁴ Framework of Current Laws Governing Determination of Legality of Arrest and of Bail in Jamaica, 2008

- planting evidence or removing it from crime scenes;
- tampering with exhibits
- trafficking in weapons;
- theft, including seizures made by police (e.g. narcotics);
- sale of favorable inspection reports for bars, clubs etc.;
- dropping of charges, including for serious offences;
- payoffs for road traffic offences.²⁵

Article 10 (Conditions of Detention)

65. In its Concluding Observations (1997), the HRC noted:

The Committee notes with concern that serious deficiencies persist in the administration of the State party's prison system. These include conditions of imprisonment which the Committee considers incompatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners and article 10 of the Covenant; attention should be paid to the lack of sanitary facilities, lighting in cells, adequate diet, adequate training of prison staff, adequate facilities for visits of convicted prisoners (by relatives and by their legal representatives) and recurrent ill-treatment of inmates.

In this regard:

Effective means of redress, without reprisals, should be available for detainees and prisoners regarding complaints of ill-treatment by police or prison warders; the Boards of Visitors should examine all such complaints and report to the prison governor. The Committee recommends that an independent prison inspectorate be established which would report publicly on its findings.

CCPR/C/79/Add.83, para. 13

66. There exists a problem of inhumane living conditions and overcrowding in prisons and police holding cells. The Special Rapporteur on Torture (2010) could not have put it more clearly:

I was most concerned about the appalling conditions of detention in general, which reflect a complete disrespect for the human dignity of persons in conflict with the law. In addition, there was no clear separation of detainees according to the different stages of criminal procedure. ... In general, police custody throughout Jamaica can be considered as inhuman."²²

67. The InterAmerican Commission on Human Rights concluded:

The problem of overcrowding is even more critical in the police holding cells, where arrested people are locked-up with persons detained on remand in completely inadequate spaces. The delegation visited the holding cells of Spanish Town and Hunts Bay police stations and found that the detainees have to share dark, un-ventilated and dirty cramped cells. Police officers in Spanish Town

²⁵ Submission On The Proposed 'Crime' Bills, Jamaicans For Justice, September 2008

reported that the mentally-ill detainees were locked-up in the bathroom of the holding section. The delegation was particularly shocked by the inhumane conditions found at Hunts Bay police station, where the detainees, crowded in numbers of up to six persons per cell, live amongst garbage and urine with absolutely no consideration for their dignity. The Commission calls for urgent action to be taken to transfer the persons detained at Hunts Bay to a place that offers adequate standards of detention.

InterAmerican Commission on Human Rights ³

JUVENILE DETENTION

The practice of children being housed in adult correctional facilities, including, prisons and lock – ups, has long been a concern of JFJ. This concern is heightened by the fact of the inhumane conditions in all or most of these facilities.

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, in her enquiries, has identified several such cases. In her recent report to Parliament, the Office of the Children's Advocate reported it was unable to have children removed from Police lock-ups in a timely manner and asked for guidance from the Parliament as to solutions. ²⁶

JFJ has received reports (including from police officers) that even in cases when the police, having detained children, attempt to have officers from the Child Development Agency (the government body in charge of children in State care), retrieve those children, they fail to do so. Thereby 'forcing' the police to keep them housed with adults.

68. By the Prime Minister's own admission in Parliament, 61 such cases existed at the end of last year. Thus, the Government of Jamaica is in contravention of its own national legislation in matters of children.

The prime minister's statement came on the same day three reports from the Office of the Children's Advocate (OCA) were tabled in the House.

One of the reports, which examined the state of children in lock-ups, revealed that as of November 4, 2009, there were 61 juveniles in police custody, 58 of whom were males. ²⁷

Since then, the situation has only gotten worse.

²⁶ Office of the Child's Advocate, Annual Report, 2008-2009

²⁷ PM: Parents, shape up!, The Gleaner, February 18, 2010

Before this, on Valentine's Day to boot, The Gleaner carried a report that the Office of the Children's Advocate had released a report on its findings regarding children being kept in police station lock-ups.

Its investigators had uncovered 80 children, almost all boys, in lock-ups across the island. The newspaper report quoted the OCA's investigative officer as saying: "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."²⁸

69. Juveniles who are in need of care and protection and those accused or convicted of serious crimes are held together in the same facilities. This is in direct contravention of national laws.

70. The Child Care and Protection Act ²⁹, section 66 states that:

... arrangements shall be made for preventing a child who is

(a) At a police station in connection with the commission of any offence ...

(b) Being conveyed to and from any criminal court remand centre or place of safety; or

(c) Waiting before or after any attendance in court

from associating with any adult, not being a relative, who is charged with any offence other than an offence with which the child is jointly charged."

71. The Special Rapporteur on Torture in 2010 observed :

- children detained, whether in need of care and protection, deemed uncontrollable or in conflict with the law, were all held together without distinction;
- there was no legislation with a clear definition or criteria for the identification of an uncontrollable child;
- many children seemed to receive disproportionately long sentences for minor infractions;
- a disturbing system of repression and regular corporal punishment;
- in Fort Augusta Correctional Centre, girls were not even segregated from adult women;
- even more worrying is the fact that children continue to be held together with adults in police lock-ups.²²

Article 14 (Judicial Processes and Guarantees)

JUSTICE SYSTEM AND REFORM

72. In its Concluding Observations (1997), the HRC noted:

With respect to the system of administration of justice and the conduct of criminal trials, especially in capital cases, the Committee is concerned that, while there has recently been some progress in reducing delays in hearings of cases at all stages of judicial procedure between the initial charge and the final appeal, further efforts should be made to reduce delays in the hearing of cases. This

²⁸ Who really cares for our children?, The Gleaner, February 21, 2010

²⁹ Child Care and Protection Act, 2004

applies in particular to the delays between dismissal of capital appeals by the Court of Appeal of Jamaica and the hearing of a petition for special leave to appeal by the Judicial Committee of the Privy Council. Therefore:

The Committee recommends that appropriate legal provisions be adopted to ensure prompt issue of a reasoned judgement by the Court of Appeal.

CCPR/C/79/Add.83, para. 17

73. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir:

In general, the Special Rapporteur was very concerned about the perception of the legal system in general. Among the persons the Special Rapporteur spoke to in the inner city communities, very few were aware of the basic outline of the procedures and their options for accessing the criminal justice system. Most people expressed strong disillusionment and lack of faith in the system. Witnesses were often afraid to make official statements as they feared reprisals and lack of support from the authorities.⁹

74. In its preliminary observations, the InterAmerican Commission on Human Rights underlined:

There is broad consensus in Jamaica on the urgent need to reform the administration of justice, which has proven ineffective in responding to the needs of the people, and which contributes to the perpetuation of violence by failing to hold perpetrators accountable. While in Jamaica, the Commission heard about high levels of impunity for violent crime and, in particular, for police shootings in circumstances that have not been clarified. The Commission also heard repeatedly the cry for justice. Furthermore, the State has failed to provide basic due process to people caught up in the criminal justice system.

The information gathered by the Commission indicates that most of the institutions that participate in the administration of justice lack the necessary resources to perform their work, and that the design of the system and procedures applied require major reforms.

The Commission was informed of severe deficiencies in the criminal justice process, ranging from the inability to assure witness protection to extended delays in criminal cases. Persons who have been arrested and detained may have to wait days, weeks or even months before they are presented before a judicial officer. Various sources indicated that delays in investigation and in reaching a decision as to charging and prosecution are a contributing factor in the failure to resolve these cases. The Commission was informed that the Director of Public Prosecutions and the Coroner's Court both have a backlog of cases pending decision, some dating back to 2000.³

75. The Jamaican Justice System Reform recommendations had laudable goals which Jamaicans for Justice (JFJ) supports: a modern justice system that is efficient, accessible, accountable, fair and able to deliver timely results in a cost-effective manner. The concern must be the failure of the Government to effectively implement the many excellent studies and proposed reforms that came before this initiative.
76. The present judicial system, fails to deliver timely and fair justice for all. The court system is slow and suffers from a chronic lack of resources. Cases may take years to make their way through all the stages of jurisdiction to completion. Other negative factors have to do with the lack of will - and the lack of management skills - to effect comprehensive reform of the justice system. This leads inevitably to a distrust of the formal justice systems within communities and civil society.
77. Several important factors are contributing to the problems in the justice system at this time and have been well documented and reported on by Jamaicans for Justice and others:¹⁶
- a. Over 400,000 cases are backlogged in the system, waiting to be tried. Resident Magistrate's courts, the Supreme Court and the Court of Appeal account for these cases, with no mention of the thousands languishing before the petty session bench.³⁰
 - b. In the Resident Magistrate's and Supreme Court
 - Inadequate numbers of Jurors summoned and present
 - Unavailability of Attorneys
 - Shortage or absence of Judges
 - Problems of date setting
 - c. The Court of Appeal

The time within which judgments are delivered is a problem and may be attributable to the high volume of cases heard and the small number of judges who sit on this court.
78. In its 3rd periodic report before the Human Rights Committee (CCPR/C/JAM 3), the Government of Jamaica states:

ARTICLE 9

53. A comprehensive review of the Jamaican Justice System was conducted in October 2006 and July 2007. ... The outcome of the process have informed the compilation of the Justice System Reform Task Force Report which is now being implemented. Work has commenced or has been finalized with respect to:

- The establishment of a Justice Modernisation Division within the Ministry of Justice to drive implementation of the modernisation plan

30 "Crippled courts - Over 400,000 cases pile up", The Gleaner, March 28th 2010 edition

- The establishment of the Court Management Services entity to facilitate more efficient operations of the Court system
- The modernization of the Office of the Director of Public Prosecutions
- The implementation of the case management system - Justice Enforcement Management System — to be replicated across all courts
- The development of a policy of Restorative Justice
- The establishment of a Legal Service Division within the Ministry
- Increasing staffing positions in the Supreme Court Registry; and Strengthening staffing positions in the Legal Reform Department.³¹

79. These statements must be put in the context of the extent and effectiveness of the implementation. As recent newspaper reports indicate this is severely limited.

STUNG BY criticisms of the slow pace of the court system, and armed with millions of dollars in grant funds from international partners, the justice ministry in 2006 embarked on an ambitious plan to reform the system.

But almost four years later, it is unclear what progress has been made in implementing the many recommendations of the Jamaican Justice System Reform Task Force (JSRTF).

The Gleaner³²

THE JUSTICE system came under judicial fire last week when Supreme Court Judge Marva McDonald-Bishop opened the Easter session of the Home Circuit Court and announced that the system was in crisis.

She said judges are hampered in performing their functions due to inadequate resources and support facilities in other areas. One of the solutions to this problem, she said, was for the Government to move quickly to set up an independent court-services agency so that the court could have its own budget and judicial independence from the executive. This was one of the recommendations of the Justice Reform Task Force back in 2007.

The Gleaner³³

LEGAL AID

80. In its Concluding Observations (1997), the HRC noted:

³¹ Third periodic report of States parties, Jamaica, 20 July 2009

³² « Reform at snail's pace », The Gleaner, March 29th 2010 edition

³³ "Judicial fire! Supreme Court judge admits system in crisis", The Gleaner, April 11th 2010 edition

While noting current endeavours to reform the system of legal aid, the Committee remains concerned about the state of current legal aid representation. This is particularly disturbing for cases involving capital punishment, where unavailability of legal aid amounts to a violation of article 6 juncto article 14 of the Covenant. Therefore:

The Committee urges the State party to monitor on a continuing basis the availability and quality of legal aid representation, and to ensure that experienced counsel is assigned to individuals accused of capital and other serious offences. The Committee emphasizes that adequate remuneration of lawyers acting under the Poor Prisoners' Defence Act at all stages of arrest and subsequent proceedings would greatly assist in providing a proper defence of clients in a proper manner. Legal aid should be available for obtaining the presence of defence witnesses for the purposes of trials.

CCPR/C/79/Add.83, para. 14

81. The need for duty Counsel and legal aid representation in Jamaica is overwhelming but there are shortages of attorneys available to deal with the demand. The number of attorneys available and willing to serve as duty Counsel or to provide legal aid services has steadily fallen since the introduction of the system in 2001, primarily because of long delays in payment of invoices and inadequacies of fees. Worse, a large number of police stations do not have a list of duty counsel to refer detainees to or do not even know they have the obligation to do so.
82. One particular concern is access to legal aid during the detention process: Many persons are detained for days and weeks without being given access to Duty counsel. This is a real flaw in the law and could be corrected by imposing sanctions for failure to call counsel for detainees. Also because police choose who to call, they sometimes call only those lawyers who will work with the police rather than for the client.¹⁶
83. The coverage of legal aid is extremely limited in its scope. Moreover, outside of the Kingston and Montego Bay area, legal aid very difficult for citizens to obtain.
84. Since 1999, Jamaicans for Justice has received upwards of 326 complaints in regard to detention and access to legal aid. These complaints relate to: prolonged detention without access to Duty counsel; physical and psychological abuse while detained; and dreadful conditions of detention. Citizens are also being photographed and fingerprinted without their consent and in circumstances which are not permissible by the Fingerprints Act
85. The InterAmerican Commission on Human Rights has criticized the availability of legal aid to Jamaican citizens, specially those who would need it most, those with limited economic means.

The Legal Aid Act that came into force in 2000 was a positive step forward. However, in many instances, criminal defendants cannot afford legal representation and legal aid is not always available. Moreover, for those who are able to obtain such aid, there are not sufficient standards or supervision in place to ensure uniform quality

of representation. The Commission also received information to the effect that certain charges are excluded from the coverage of legal aid, and has yet to receive information about how indigent persons under such charges obtain representation. Once again, people with limited economic resources are those most affected by this problem.

InterAmerican Commission on Human Rights ³

Article 24 (Rights of the Child)

86. It should be noted that Jamaica has signed but not yet ratified the Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography.

87. Jamaicans for Justice is disappointed and shocked by the fact that, in its 3rd periodic report, the Government of Jamaica touches only on the issue of “child registration” under article 24, when the country is in a turmoil over the treatment meted out to its children.

88. An impressive number of reports and analyses done over the years by national and international entities have highlighted this dismal failure to protect the children and uphold the rights of the child. Concerns have been documented from and for many quarters of Jamaican society (including a National Task Force on Child Abuse Prevention, convened in 2010 by the Prime Minister of Jamaica himself).

Amongst them:

- The Jamaica Coalition on the Rights of the Child ³⁴
- The Jamaican Child Development Agency ³⁵
- Jamaicans for Justice ^{36 37 38 39}
- The Keating Report ⁴⁰
- The UN Committee on the Rights of the Child ⁴¹
- The Armadale Report ⁴²

89. Jamaicans for Justice contends that the Government of Jamaica is in gross violation of its obligations to respect and ensure the rights of children who are in the custody of the

³⁴ Non-governmental organisations written submission under article 45 (a) of the convention United Nations Convention on the Rights of the Child, 2003

³⁵ Child Development Agency, Contribution to the Jamaican Justice System Reform, 2007

³⁶ Report to the InterAmerican Commission on Human Rights Special Rapporteur on the Rights of the Child – Jamaicans for Justice, 2003

³⁷ Report to the InterAmerican Commission on Human Rights on the Situation of Children in the Care of the Jamaican State, Jamaicans for Justice, 2006

³⁸ Report to the InterAmerican Commission on Human Rights on the Situation of Children in the Care of the Jamaican State, Jamaicans for Justice, 2009

³⁹ Response to the Government of Jamaica Presentation to the InterAmerican Commission on Human Rights on Children in care of the State – Jamaicans for Justice, 2010

⁴⁰ The Government of Jamaica: *Keating's Report: A Review of Children's Homes and Places of Safety in Jamaica*, 2001

⁴¹ CRC, 33rd session, CRC/C/15/Add.210, 4 July 2003

⁴² The Armadale Report, Government of Jamaica, 2010

Jamaican State, not only according to its own legislation but also in respect to international human rights conventions, norms and instruments.

90. The InterAmerican Commission on Human Rights stated:

According to information received by the Commission, the Jamaican government's child-care system suffers from disturbing levels of sexual, physical and mental abuse of children at the hands of caregivers, and urgently requires reforms and additional resources.

The Commission received information that the conditions of detention of juveniles in police holding cells and detention centers fail to comply with international standards. In particular, the Commission found that juveniles are held in overcrowded centers and are mixed with adults. The Commission also received information on corporal punishment and other forms of degrading treatment applied to them. The duration of the punishment established in certain cases is also of particular concern to the Commission, as are the reports on lack of legal counsel.

InterAmerican Commission on Human Rights ³

91. Although the Jamaican state has instituted an Office of the Children's Advocate, it is under-staffed, under-resourced and appears to be unable to hold the government of Jamaica accountable. It fails to ensure that the Government complies with its national and international obligations.

92. In its annual reports to date^{26 43}, the Office of the Children's Advocate has made numerous recommendations underlining the failings in the protection of children in Jamaica. By its own admission in the **Update on Policy Recommendations submitted to Parliament** in its 2008-2009 report (p. 49-55), almost none of these have been implemented by the Government of Jamaica.

93. Jamaicans for Justice has worked with that Office toward the mutual goal of protection of the rights of the nation's children. At the same time we have questioned and been very critical of the work of the Office and consider this resource could and should be more effective in defending the children of the nation.⁴⁴

CHILDREN'S HOMES

94. Jamaicans for Justice has drawn attention to the plight of Jamaica's children "under governmental care" in a series of reports and analyses that have been submitted to national and international bodies, in particular the InterAmerican Commission on Human Rights .^{36 37 38 39}

⁴³ Office of the Child's Advocate, Annual Report, 2007-2008

⁴⁴ Submission to the Reports Committee of Parliament on the Office of the Children's Advocate annual report 2008-2009, Jamaicans for Justice, 2009

95. It has found the authorities of Jamaica in breach of their national and international obligations in the following areas:
- sexual and physical abuse, neglect, maltreatment, and endangerment of institutionalized children;
 - absence of criminal charges being brought against alleged perpetrators;
 - absence of adequate therapeutic treatment for abused or mistreated children;
 - corruption, mismanagement, and lack of integrity, accountability, and effectiveness in many of Jamaica's children's homes;
 - lack of adequate monitoring systems;
96. Furthermore, the Government of Jamaica has repeatedly been responsible for permitting violations against human rights for children in an inconceivable number of areas.
- The children under "state protection" are **not** provided with as a right the measures of protection required by their condition as minors on the part of society and the state;
 - The Government of Jamaica fails to ensure the safety, the emotional well being, welfare and fundamental needs of the children in its custody;
 - The children who are in the custody of the State continue to be in grave danger as JFJ reported to the Commission in many written submissions since 2003.
97. The Report on the tragedy at Armadale most recently illustrates the intolerable degree of human rights abuses to which all the girls in this center were submitted and most cruelly felt by those who died there. This report also details other instances of abuse occurring in other homes run or supervised by the Government of Jamaica. Among its findings were the following:
- The Government of Jamaica did not undertake all appropriate measures to protect and preserve the rights to life and to humane treatment of the girls at Armadale
 - It was negligent and careless by providing inadequate safety and sanitary housing conditions, particularly on the night of the tragic fire, in that:
 - 23 girls were packed into a dormitory 20 feet by 12 feet when the national Building Code norm is one person per 50 square feet
 - only 7 bunk beds with 14 mattresses were provided and one toilet !
 - there was only one exit door, locked and unavailable to the girls
 - there was a lack of fire extinguishers and no established evacuation procedure in case of fire, although there had been fires previously at Armadale
 - the use of the bathroom was restricted to one hour a day. Consequently, the girls had to use buckets and pans in order to

complete their baths in the dormitory and would perform all their body functions in buckets, plastic bags or newspapers

- They had to eat their meals with their hands, no forks or spoons being provided
 - All the girls were regularly being held in lock-down (a practice in which they were confined to the dormitory for days or weeks and deprived of all outdoor activities) for extended periods of time for offenses committed by others;
 - Children with mental health problems and/or HIV received inadequate (or no) medical or psychological care.
 - The children at Armadale were subjected to degrading punishment, which may aptly be described as ‘cruel, inhumane and torturous.’
98. In its 2009 report,³⁸ Jamaicans for Justice drew attention the deplorable conditions existing in other childrens homes:
- *SOS Village Boys Home, Stony Hill, St. Andrew:*
 - case of physical abuse reported only to the Office of the Children’s Registry and not the Stony Hill Police as required. No medical attention was sought.
 - The death of a child was not recorded in the records of the home, which goes against the CDA’s own protocol
 - *Windsor Girls Home, St. Ann’s Bay, St. Ann*
 - security guards let men onto the compound to see the girls. Men are hanging around outside the dormitories of the girls and speaking to them through the windows
 - lack of sufficient food for the children
 - *Maxfield Park Children’s Home, Kingston*
 - no staff members who were trained in First Aid at the home
 - insufficient supervision for all the children who were living at the home
 - Inadequate supervision of toddlers and infants
 - staff leaving the facility almost two (2) hours before their shift was over.
 - staff leaving the children before the caregiver from the next shift comes to relieve them.

Article 26 (Equality before the Law)

GAY RIGHTS

99. Amnesty International has been particularly concerned by the situation of gay people in Jamaica.²¹

Gay people in Jamaica, or those suspected of being gay, are routinely victims of ill-treatment and harassment by the police, and occasionally of torture.... Reports also indicate that the police have failed to protect gay people from violence in police detention or to assist victims or witnesses of homophobic crimes. In some cases, reporting incidents of homophobic violence to the authorities has

resulted in further victimization and ill-treatment at the hands of the police.

100. Anti-sodomy laws have also resulted in AIDS awareness workers being detained and ill-treated on suspicion of promoting homosexual relations.

The Commission strongly condemns the high level of homophobia that prevails throughout Jamaican society. This homophobia has resulted in violent killings of persons thought to be gay, lesbian, bisexual or transsexual, as well as stabbings, mob attacks, arbitrary detention and police harassment. The resulting fear in turn makes it difficult for people within this group to access certain basic services, for example, medical services that might reveal their sexual orientation. Defenders of the rights of gays, lesbians, bisexuals and transsexuals have been murdered, beaten and threatened, and the police have been criticized for failing in many instances to prevent or respond to reports of such violence. The State must take measures to ensure that people within this group can associate freely, and exercise their other basic rights without fear of attack.

InterAmerican Commission on Human Rights³