

IACHR

**REPORT
ON THE SITUATION
OF HUMAN RIGHTS IN
JAMAICA**

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



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REPORT ON THE SITUATION OF HUMAN RIGHTS IN JAMAICA

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REPORT ON THE SITUATION OF HUMAN RIGHTS IN JAMAICA¹

CHAPTER I INTRODUCTION

A. Scope and legal framework of the report

1. Over the last three years, the Inter-American Commission on Human Rights (hereinafter “IACHR” or “the Inter-American Commission”) has paid special attention to the situation of human rights in Jamaica through its different mechanisms including individual petitions and cases, requests for precautionary measures, and monitoring on the basis of reports from diverse sources. At the invitation of the government of Jamaica, the IACHR conducted an on site visit to that country from December 1 to 5, 2008 to observe its human rights situation. It subsequently held public hearings at its headquarters and reviewed reports from a variety of sources, including international human rights bodies and non-governmental organizations, in order to follow up and update the information received during that visit.

2. The IACHR is the principal organ of the Organization of American States (OAS) responsible for promoting the observance and protection of human rights in the Hemisphere. The seven members of the Inter-American Commission are elected in their personal capacity by the OAS General Assembly for a four-year term. The IACHR’s competence derives, *inter alia*, from the OAS Charter and the American Convention on Human Rights, treaties ratified by Jamaica.

3. The Inter-American Commission, in the exercise of its primary function of promoting the observance and defense of human rights in the American States, and the powers granted by Article 41 of the American Convention on Human Rights, publishes this report containing its considerations and recommendations based on observations during the visit to Jamaica, and the information provided by government authorities and representatives of civil society before, during and after the visit.

4. During its visit and subsequent hearings on Jamaica, the IACHR has paid special attention to the situation of human rights and citizen security, the conduct of the country’s security forces, the administration of justice and prison conditions, as well as the situation of women, children, persons with disabilities, persons living with HIV/AIDS, persons deprived of liberty, and persons suffering discrimination on the basis of their sexual orientation.

5. The IACHR has been observing an alarming level of violence in Jamaica that has affected all sectors of society for many years. The persistence of this widespread violence has had severely negative consequences for the human rights of the Jamaican

¹ In accordance with the provisions of Article 17.2 of the Rules of Procedure of the Commission, Commissioner Tracy Robinson, of Jamaican nationality, did not participate in the debate or decision of the present report.

people. The Inter-American Commission concludes that although the government has undertaken certain constructive efforts to address the problem, these remain insufficient. They are hampered by inadequate resources, a failure to sufficiently address the severe shortcomings of the security forces and the judicial process, and the lack of integral, effective policies to ameliorate the social conditions that generate the violence.

6. The profound social and economic marginalization of large sectors of the Jamaican population results in the poorest and most excluded sectors of the population being disproportionately victimized by the overall situation of insecurity. In the same way, the deep inequalities pervading Jamaican society are exacerbated by the State's inadequate measures to protect and guarantee the human rights of women, children and other vulnerable groups. In particular, the IACHR finds the violent persecution and fear to which gays and lesbians are subject in Jamaica to be deplorable.

7. In this report, the IACHR will first present its concerns as to the situation of citizen security and human rights generally in Jamaica. It will then discuss its observations on the institutional weaknesses in the administration of justice, the problems of excessive use of force and police impunity, the conditions in prison and penitentiaries, and the use of the death penalty. In the following sections of the report, the IACHR will outline the main problems affecting the most vulnerable sectors at special risk of being subject to human rights violations: persons deprived of liberty; women; children; persons belonging to sexual minorities; persons living with HIV/AIDS; and persons with disabilities. In each of those sections the Inter-American Commission will stress the obstacles that these groups face in accessing justice and obtaining effective responses to protect their rights.

8. At the end of each section, the IACHR will list its recommendations on each issue, aimed at ensuring that the situation of human rights in Jamaica and the initiatives of the State to improve it comply with the international obligations on human rights it has assumed. In this respect, the frame of reference for the conclusions and recommendations will be the inter-American human rights instruments that Jamaica has ratified,² with certain references to the provisions of other international instruments, as well as to the Jamaican Constitution and relevant domestic legislation.

B. The IACHR visit

9. At the invitation of the Government of Jamaica, the IACHR conducted a visit to that country from December 1 to 5, 2008, to observe the overall human rights situation. The delegation included Commissioners Paolo Carozza, Luz Patricia Mejía, Felipe González and Clare K. Roberts, as well as IACHR Executive Secretary, Santiago A. Canton, Assistant Executive Secretary, Elizabeth Abi-Mershed; and legal and administrative staff.

² Jamaica ratified the American Convention on Human Rights on July 19, 1978; and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention of Belém do Pará" on November 11, 2005. Further, on June 8, 1999 Jamaica signed Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities, but has not yet ratified it.

10. During its visit, the Inter-American Commission met with the following representatives of the Jamaican Government: Bruce Golding, Prime Minister; Kenneth Baugh, Minister of Foreign Affairs and Foreign Trade; Dorothy Lightbourne, Minister of Justice; Trevor MacMillan, Minister of National Security; Hardley Lewin, Commissioner of the Police; Earl Witter, Public Defender; Stewart E. Saunders, Chief of Staff of the Jamaica Defense Force; Paula Llewellyn, Director of Public Prosecution; Judith Mowatt, Director of the National Forensic Laboratory; Faith Webster, Executive Director of the Bureau of Women's Affairs; A. C. P. Gause, Head of the Bureau of Special Investigations; Lloyd Ellis, Executive Chairman of the Police Public Complaints Authority; Cresencia Brown, Vice President of the Resident Magistrates Association, among others.

11. The delegation also had meetings with the Coroner of Kingston, the Pathology Unit at the National Security Ministry, and the Police Superintendent for Spanish Town, and visited the Council on Legal Aid in Kingston.

12. In Montego Bay, the delegation visited the Legal Aid Office and held meetings with the Mayor, Charles Sinclair; Rosalie Toby, Magistrate of the Family Court; Bishop Dufour, head of the Peace Management Initiative in Montego Bay; Reverend Jackson, representative of the Police Civilian Oversight Authority; and civil society organizations.

13. Furthermore, to observe the human rights situation of persons deprived of liberty, the IACHR visited the St. Catherine Adult Correctional Center, the holding cells of Spanish Town and Hunts Bay police stations and St. Andrew's Juvenile Remand Center.

14. The Inter-American Commission also held meetings and discussions with representatives of different sectors of civil society, including Jamaicans for Justice, the Independent Jamaican Council for Human Rights, the Farquharson Institute of Public Affairs, the Jamaica Forum for Lesbians All-Sexuals and Gays (J-FLAG), Women Inc., the Women's Media Watch, the Association of Women's Organizations in Jamaica, the Jamaica Women's Political Caucus, Women Empowering Women, the Women's Resource and Outreach Centre, Youth Opportunities Unlimited, the Jamaican Coalition for Rights of the Child, and the Justice and Peace Center in Montego Bay.

15. The IACHR also met with religious leaders, including Monsignor Richard Albert in Spanish Town and Missionaries of the Poor in Kingston. Further, it held meetings with the Jamaican Bar Association, the Southern Bar Association of Jamaica, and the Norman Manley Law School Legal Aid Clinic.

16. In addition, the Inter-American Commission co-organized a promotional activity with the Ministry of Justice and Jamaicans for Justice, and signed a Memorandum of Understanding with the Norman Manley Law School aiming at strengthening institutional cooperation in order to promote awareness of the Inter-American human rights system in the Caribbean.

17. The IACHR emphasizes that it was entirely at liberty to meet with any person of its choosing. The IACHR extends its sincere appreciation to the Government and

people of Jamaica for their assistance with the visit, and thanks the government for providing the cooperation and facilities required to carry out the visit. It thanks the people of Jamaica, including the representatives of nongovernmental and civil society organizations who provided information and hospitality during the visit. The Inter-American Commission also extends its appreciation to the OAS Country Office for its helpful assistance and cooperation. The IACHR expresses its special appreciation for the important financial support of the European Commission and Luxembourg, whose donations helped to make the visit possible.

C. Draft report and response by the Jamaican State

18. The IACHR reviewed the present report and approved it on December 31, 2011. Pursuant to Article 58 of the Inter-American Commission's Rules of Procedure, the report was transmitted to the Government of Jamaica on January 26, 2012, with a request for observations within one month.

19. The Jamaican State sent a communication on March 3, 2012 in which it indicated that it had not been possible for it to meet the deadline established for the submission of observations on the report. Jamaica further stated that "consultations are ongoing with a view to submitting the Government's observations as soon as possible". A new communication was sent by the State on March 5, 2012 in which it expressed that the relevant authorities in Jamaica were working to submit the Government's response by March 19.

20. The document with the observations of the State to the report was presented on March 20, 2012; it includes a brief section of general observations, as well as sections with specific comments on chapters I-VII of the draft report sent to it on January 26, 2012; no observations were presented with respect to chapters VIII (Rights of persons with disabilities) or IX (The right to freedom of thought and expression). The observations and comments were reviewed by the Inter-American Commission, and reflected where relevant in this final version of the report on Jamaica.

21. The State begins its response by expressing that it "is committed to the promotion and protection of human rights, and takes seriously its obligations under the various regional and international human rights instruments to which it is a party" and that "it is against this background that the Government has received and reviewed the report prepared by the Inter-American Commission on Human Rights (IACHR) on the human rights situation in Jamaica." The State goes on to formulate its general opinion on the information used by the IACHR to support the report; it also indicates its disapproval of what it considers "the casting of aspersions on the integrity of its judicial process" and that the IACHR should only make such statements where "there is clear and incontrovertible evidence to substantiate such claims."

22. The IACHR takes note that the State disagrees with certain considerations and conclusions of this report, but it must stress that these are based on its own observations during the visit to Jamaica, as well as by its independent analysis of several reports, interviews and hearings with a large number of authorities, victims, members of

civil society, academics and persons who have been following and documenting the situation over the years, including the Public Defender and the Members of the Jamaican Justice System Reform Task Force established by the country's Government. The Inter-American Commission appreciates the detailed and updated response sent by the Jamaican State, and the generally constructive attitude it has taken in acknowledging some of the problems identified in this report.

23. As will be reflected throughout this document, the Jamaican State has provided very valuable information on the steps it has been adopting over the past few years to address and overcome structural situations affecting the full enjoyment of human rights of its population. The IACHR looks forward to continuing to collaborate with the Jamaican State and members of civil society to contribute to this process, within the mandate and powers given to it by the Charter of the OAS, the American Convention on Human Rights, its Statute and Rules of Procedure.

CHAPTER II CITIZEN SECURITY AND HUMAN RIGHTS

A. Introduction

24. The Inter-American Commission has addressed the issue of citizen security and its relationship to human rights through the study of petitions, cases and precautionary measures, thematic reports, country reports issued on the basis of *in loco* visits made to various countries of the region and at hearings held during its sessions. In December 2009, the IACHR approved its “Report on Citizen Security and Human Rights” where it analyzed the effects of violence and crime upon governability in the countries of the Hemisphere. Among other matters, it stressed that citizen security requires the establishment of a strong and competent civilian police force to protect citizens, the strengthening of the administration of justice, the elimination of corruption and impunity, and the construction of a prison system aimed at the rehabilitation and social reintegration of prisoners.

25. In the conclusions of its report on citizen security, the IACHR stated:

The rates of crime and violence in the Hemisphere today have made citizen security one of society’s chief demands of its state officials. The situation today is the result of a process that has been underway for decades, in which social, economic, cultural and institutional factors have converged, operating as enablers allowing various forms of violent behavior to develop and multiply, mirroring the sharp increase in crimes that pose a threat to the effective exercise and enjoyment of human rights.

Everyday, the societies of the Hemisphere are up against new and ever changing challenges to the kind of democratic co-existence that fosters tolerance, solidarity and respect for the rights of all persons. Salient among these challenges is violence, which manifests itself in a variety of ways: organized crime; the large numbers of firearms in private hands; the abuse of narcotic drugs; violence against women; violence against children and adolescents; violence against the indigenous population and violence against Afro-descendants; disputes that involve social and community movements, and the rarely-studied phenomenon of the violence associated with juvenile delinquency and its many causes.

In a number of countries of the region, the response to the situation has been to reinforce approaches that have proved to be ineffective in solving society’s demands for citizen security, based upon harsher penalties, fewer procedural guarantees, and to have adolescents charged as adults when accused of criminal offenses. The State’s failure to adequately respond to the violence and crime triggered a reawakening of social mentalities based on intolerance and stigmatization of individuals

or groups of individuals and in the process laid the groundwork for vigilante justice by “social cleansing” groups, “deaths squads” or para-police or para-military groups.³

B. Situation of violence and insecurity in Jamaica

26. The population of Jamaica is subject to the consequences of widespread deadly violence. The country has faced a rising homicide rate with a record high total of 1,680 persons murdered in the country during 2009.⁴ A leading Jamaican publication reported that it had counted at least 409 people murdered during the first 90 days of 2010, which would mean four persons killed each day for that period. According to the official crime statistics of the Jamaica Constabulary Force (JCF), the official crime statistics from January 1st until March 21, 2010 indicated that 344 persons were murdered.⁵ In 2010 there were 1,428 officially reported murders, though civil society groups have disputed the number of deaths during the May 2010 state of emergency, as discussed below.⁶

27. This violence, combined with the large number of persons living in poverty and the troubled economic situation in Jamaica, have contributed to a situation of insecurity. The Inter-American Commission’s visit was in large part focused on the state of citizen security and as it affects the human rights of the Jamaican population. During its visit, the IACHR not only verified an extremely high and alarming level of violence in the country, but also confirmed that the measures taken by the Jamaican State have not been sufficient or effective to respond to this situation. As the IACHR stated in its December 2008 press release following the *in loco* visit to Jamaica, the historical response of the State has been inadequate, due to the absence of an integral policy to address and prevent violence, the failure to dedicate sufficient resources to the problem, and the absence of an effective response by the police, judiciary and other authorities.⁷ Information gathered since the visit through the first part of 2011 indicates that these continue to be

³ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, paras. 217 to 219. Available at <http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>.

⁴ Jamaica Observer, “Jamaica Records Highest Ever Murder Rate in 2009”, January 8, 2010, available at <http://www.jamaicaobserver.com/latestnews/jamaica-records-highest-ever-murder-rate-in-2009> The publication highlights that this exceeds the previous record of 1674 murders in 2005 and adds that “releasing crime statistics for 2009 today, the Jamaica Constabulary Force said that 52 per cent of murders were attributed to gang warfare and reprisals. A total of 1292 persons were killed by the gun”. See also, Jamaicans for Justice, “Reform Matters”, *Crime, Policing and Human Rights Abuses: Perceptions and Correlations*, March 25, 2010, available at http://www.jamaicansforjustice.org/nmcms.php?snippets=news&p=news_details&id=1833

⁵ Jamaica Gleaner, “Why We Should Be Outraged”, published April 4, 2010, available online at <http://www.jamaica-gleaner.com/gleaner/20100404/cleisure/cleisure1.html>. The publication clarifies that “these figures do not include the 63 police homicides up to March 21, ostensibly criminals shot dead by police officers, having been attacked by these criminals.”

⁶ Mark Wignall, “Why Has Jamaica’s Crime Rate Fallen?” Jamaica Observer, Feb. 3, 2011. Available at http://www.jamaicaobserver.com/columns/Why-has-Jamaica-s-crime-rate-fallen_8329778.

⁷ IACHR, Press Release 59/08. Available at: <http://www.cidh.org/Comunicados/English/2008/59.08eng.htm>.

fundamental challenges.⁸ The lack of a proper response by the authorities has led to a general deterioration of the human rights situation in Jamaica, disproportionately affecting the poorest sectors of society, as well as those who are already more vulnerable to human rights violations, such as women, children, and those who face discrimination on the basis of sexual orientation or gender identity.

28. The IACHR has pointed out that among the greatest challenges to a democratic society are organized crime; large caches of firearms in private hands; and widespread drug abuse, the very challenges Jamaica faces. The IACHR understands that the State of Jamaica, like all Member States of the OAS, has not only the power but also the duty to combat crime and to guarantee the right to security of all the inhabitants, through measures consistent with its own constitutional guarantees and international human rights obligations. In its Report on Citizen Security and Human Rights, the Inter-American Commission recommended to the Member States of the OAS that they “ensure that the police force conducts all operational activities necessary to prevent, deter, and lawfully suppress acts of violence or crime, as part of the State’s obligation to protect and ensure the human rights directly at stake in the policy of citizen security”.⁹ In the same report, the Inter-American Commission concluded:

Member States have a duty to protect and ensure the human rights at stake in the area of citizen security through plans and programs aimed at prevention, deterrence and, where necessary, measures of lawful suppression of acts of violence and crime, based on the guidelines and within the boundaries set by the standards and principles on human rights within the universal and regional human rights systems.

The Commission recognizes that in order to fulfill the obligations referred to in the preceding paragraphs, the member states may occasionally have to limit or restrict the exercise of certain rights. These limitations or restrictions comply with internationally accepted standards on human rights only when they are informed by the principles of necessity, lawful purpose, proportionality, rationality and nondiscrimination.

⁸ For example, the report of in the Universal Periodic Review of Jamaica by the United Nations Human Rights Council, included conclusions and recommendations regarding socio-economic development, the implementation of comprehensive policies to address deficiencies in the police and the judiciary, as well as training security forces in human rights. United Nations, Report of the Working Group on the Universal Periodic Review, Jamaica, A/HRC/16/14, Conclusions and/or Recommendations, 4 January 2011, para. 98. Also, the United Nations Special Rapporteur on Torture visited Jamaica in February 2010 and based on his finding, he recommended to the Jamaican State several measures of safeguard and prevention of violations, which include “break[ing] the cycle of violence by addressing the root causes of violent crime, including, inter alia, drug trade, links of criminal gangs to political parties, corruption, poverty and other socio-economic disparities”. United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Jamaica, A/HRC/16/52/Add.3, 11 October 2010.

⁹ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 232, Recommendation No. 7.

29. The IACHR must emphasize that the main victims of violent crime in Jamaica are people living in poor, overcrowded inner-city areas and affected by high rates of unemployment and lack of access to education, health and housing. More than a third of the population of Kingston lives in these communities, which have suffered many years of State neglect.¹⁰

30. Jamaica's gangs are responsible for the overwhelming majority of crime in the country.¹¹ According to information received by the IACHR, there are at least 120 criminal gangs operating in Jamaica, thought to be responsible for 80 percent of all major crimes in the country.¹² These armed gangs exercise social control of impoverished communities through ruthless violence. While the Inter-American Commission acknowledges the State's attempts to counteract criminal gang presence in Jamaica, it must also express its grave concern over reports of possible connections between Jamaican political institutions and inner-city criminal gangs.¹³

31. Many neighborhoods with high levels of violence are referred to as "garrison communities," which are political strongholds where dominant gangs prosper under the direction and support of Jamaican political parties.¹⁴ The National Committee on Political Tribalism reported that "criminal gangs tend to identify themselves with particular garrison communities and remain affiliated or aligned to their particular party. During election periods members of these gangs surface as perpetrators of political violence and

¹⁰ IACHR, Press Release 59/08. Available at: <http://www.cidh.org/Comunicados/English/2008/59.08eng.htm>.

¹¹ Amnesty International, "Public Security Reforms and Human Rights in Jamaica", AMR 38/001/2009 (Jul. 2009).

¹² Amnesty International, "Public Security Reforms and Human Rights in Jamaica", AMR 38/001/2009 (Jul. 2009), at 5.

¹³ A special report prepared for the Jamaican Parliament explains that persons linked to organized crime in that country "are able to use their criminally-acquired wealth to corrupt some of the key institutions of the country, including the Police Force, elements in the state bureaucracy and the political parties". The report indicates, therefore, that crushing organized crime requires "cutting its links to the political parties and via the parties to the State" because "these links are a source of its wealth and ability to launder criminally-acquired money" and "are also a source of its power in the communities of the urban poor". See "Road Map to a Safe and Secure Jamaica: Report of the Special Task Force on Crime", May 2006, para. 2.1.5, 2.1.7, p. 10. This report was convened by Bruce Golding, who was at the time Leader of the Opposition in the Jamaican Parliament, and was prepared by the Special Task Force on Crime, which included high-ranking retired military officers, academics and specialists in the field.

¹⁴ National Committee on Political Tribalism, "Report of the National Committee on Political Tribalism", July 23, 1997. More recently, in response to a call for "specific timelines for the implementation of the governance commitments" made in the address to the Nation by Prime Minister Bruce Golding in May 2010, Jamaicans for Justice issued a statement indicating that such commitments "must be critically focused on breaking the linkages between politics and criminality" and stressed that "paramount in that process is the full reintegration of garrison communities and residents into the wider society including enabling them to have equal access to the services and benefits afforded other citizens". Jamaicans for Justice, "JFJ Supports Calls of CAFFE and Presidents' Council", May 21, 2010, available at: http://www.jamaicansforjustice.org/nmcms.php?snippets=news&p=news_details&id=1954

election malpractices.”¹⁵ The Committee further stated that there were clearly recognized garrison communities in the Kingston, St. Andrew, and Central St. Catherine constituencies.¹⁶ Former Police Commissioner and head of the army Hardley Lewin has also acknowledged gang domination with political ties, describing the Tivoli Gardens constituency as the “mother of all garrisons.”¹⁷ The comment was made in the context of criticism of the police force’s inability to monitor effectively politically-controlled areas.¹⁸

32. In its observations to the report, the State acknowledges that “it is true that Jamaica continues to be challenged by high rates of crime and violence” and that it “remains committed to addressing the problem, despite financial and other challenges, in order to ensure a comprehensive and multi-sectoral approach to fighting corruption, dismantling gangs and garrisons in communities and addressing the root causes of violent crime”. Jamaica highlights the efforts it has been making to tackle crime and violence and expresses that “strenuous efforts continue to be made at the bilateral, regional and multilateral levels to identify best practices for tackling this problem.” In this regard, the State also informs that it is “undergoing a major modernization of its national security and law enforcement infrastructure to reduce levels of violent crime and transform the national security environment.” Jamaica further submits the following:

The Ministry of National Security is continuing its work with other Ministries, Departments and Agencies to develop an inter-departmental Crime Prevention and Community Safety Strategy utilizing a participatory and coherent approach that will result in the implementation of policies designed to prevent crime, reduce violence, particularly youth and gang related violence. A Crime Observatory is also in place and will be expanded. There has been a general reduction in major crimes, including murder, over the last 2 years. The Government of Jamaica is currently working on the passage of Anti-Gang Legislation.

Other programmes that have made inroads in communities include the Community Renewal Programme, which has an initial target of conducting social interventions in one hundred (100) vulnerable and volatile communities over the medium term (3-5 years), the Citizens Security and Justice Programme (CSJP), which is in its second 4-year phase; and the Safe School Programme that places emphasis on addressing violence and their causes in schools.

¹⁵ National Committee on Political Tribalism, “Report of the National Committee on Political Tribalism” (Jul. 23, 1997), at 9-10.

¹⁶ National Committee on Political Tribalism, “Report of the National Committee on Political Tribalism” (Jul. 23, 1997), at 6.

¹⁷ Jamaica Observer, “Army chief says ... Tivoli Mother of all Garrisons,” Oct. 8, 2005. Available at http://www.jamaicaobserver.com/news/89948_Army-chief-says---Tivoli-mother-of-all-garrisons.

¹⁸ Jamaica Observer, “Army chief says ... Tivoli Mother of all Garrisons,” Oct. 8, 2005. Available at http://www.jamaicaobserver.com/news/89948_Army-chief-says---Tivoli-mother-of-all-garrisons.

The flow of weapons into Jamaica remains a challenge, especially since the country is not a manufacturer of small arms and light weapons. In keeping with the need to ensure that source countries undertake greater responsibility in preventing the illicit traffic of such weapons, a key priority for Jamaica remains increased collaboration with bilateral and regional partners to reduce the availability of illicit firearms and narco-trafficking to Jamaica as well as to facilitate cross-border identification and prosecution of traffickers. Of note is the fact that there is a regional task force on crime and security, which is responsible for law enforcement and national security in Member Countries of the Caribbean Community (CARICOM), and which is complemented by the 2011 CARICOM Declaration on Small Arms and Light Weapons. At the national level, the Government of Jamaica is finalizing a comprehensive National Small Arms Policy which will seek to (a) implement legal and administrative controls to restrict the availability and misuse of firearms, ammunition and explosives and to ensure that they are properly and safely secured; and (b) develop programmes and policies that will address the supply, possession and use of illicit firearms at the community level.

C. Killings at the hands of the security forces

1. Violence and killings in May 2010

33. In the last week of May 2010, a series of violent incidents took place, during which a state of emergency was declared. According to the Jamaica Information Service, “Minister of National Security, Senator Dwight Nelson [...] said that the joint military/police operation which started in Tivoli Gardens on Monday (May 24) was primarily aimed at executing a warrant issued by the Courts for the arrest of Michael Christopher Coke.” Information of a public nature received by the IACHR indicated that violent armed clashes involving police and security forces resulted in some 73 persons killed during the emergency.¹⁹ Further, more than 4,000 Jamaicans were detained under the state of emergency provisions.²⁰

34. On May 27, 2010, the IACHR sent a communication to the Jamaican State pursuant to Article 41 of the American Convention and Article 18(d) of its Statute, in which it requested that the State provide information on the measures adopted to comply with that international instrument, specifically, investigations into the deaths that took place during the violent events of that month. On the same date, the Inter-American

¹⁹ Though the official number of those killed is 73, there are unofficial reports the number may be as high as 100. See Submission from Jamaicans for Justice, For Consideration in the Formulation of the List of Issues by the Human Rights Committee’s Task Force during the 100th Session, 4-5 (11-29 October 2010), available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/JFJ_Jamaica100.pdf.

²⁰ Submission from Jamaicans for Justice, For Consideration in the Formulation of the List of Issues by the Human Rights Committee’s Task Force during the 100th Session, 4-5 (11-29 October 2010), available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/JFJ_Jamaica100.pdf.

Commission issued a press release in which it expressed its deep concern about the wave of violence experienced in Jamaica beginning May 23, 2010. The IACHR also stated:

The legitimate use of public force implies, among other factors, that it should be both necessary and proportional to the legitimate end being sought. For the degree of force exercised by officials of the State to be considered in line with international parameters, it should not go beyond that which is “absolutely necessary.” The *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* states, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” The IACHR has also said that State agents may employ lethal force only in exceptional cases, in which direct or imminent danger of death or injury could cause the death of the agent himself or of another person.

Case law of the Inter-American System of Human Rights has made it clear that agents of the State have the obligation to enforce the law and maintain order even when the process involves, in some cases, death or bodily injury as a result of the proportional use of force. Furthermore, the force used must not be excessive. When excessive force is used, personal integrity is not respected, and all loss of life that results is arbitrary. The IACHR urges the State of Jamaica to adopt all necessary measures to guarantee the right to life, integrity, and security of all persons.

With regard to the declaration of the state of emergency, the IACHR recalls that the American Convention on Human Rights establishes the suspension of guarantees as an exceptional mechanism to suspend the enjoyment and exercise of some rights in time of war, public danger, or other emergency that threatens the independence or security of the State Party. Under Article 27 of the American Convention, the extent of the suspensions must be that which is strictly required to mitigate the emergency situation, which means limiting the period of time and geographical area in which suspensions are applied and limiting the rights that are suspended. Each and every act to implement the suspension of guarantees must be reasonable; that is, it should be strictly appropriate and commensurate to the situation and should not involve any type of discrimination.

35. The IACHR did not receive a response from the State to the above mentioned request for information. However, the official position regarding those events was expressed in Jamaica’s report submitted to the United Nations Human Rights Council as part of the Universal Periodic Review. In that submission, Jamaica said that it had faced “extraordinary challenges to the maintenance of law and order” which led the authorities to impose a limited state of emergency in sections of the capital city and to conduct

security operations in the Tivoli Gardens and Denham Town areas of West Kingston.²¹ Jamaica also mentioned that the purpose of the state of emergency was to “facilitate the efforts of the security forces to combat criminal activity, which had become a serious threat to institutions of the State”. Finally, the State indicated:

The operation was precipitated by intelligence gathered by the security forces indicating that heavily armed men opposed to the decision to issue the authority to proceed with committal hearings for the extradition of Mr. Christopher Coke to stand trial in the United States on drugs and gun trafficking charges, were preparing to attack members of the security forces. Intelligence also indicated that criminal elements in other communities intended to launch attacks on the security forces. This was corroborated by the fact that a number of police stations in and outside of Kingston were attacked by armed men using guns and Molotov cocktails. Two police stations were set on fire and extensively damaged and two police officers were shot and killed. It should be noted that improvised explosive devices, such as booby traps and bottle bombs, were used by criminals to fortify strategic points in the community to impede access by the security forces into the community.

At the end of the period, 23 to 26 May, 73 civilians were killed. Following the security operations, the Government immediately launched an extensive investigation into the military/police operations carried out during this period, including the circumstances of the civilian deaths. The Office of the Public Defender and independent commission of Parliament charged with investigative powers on behalf of the citizens of Jamaica, established an office in the area to receive complaints from persons who witnessed or experienced violations of fundamental rights on the part of the security forces. The Complaints Division, a unit of the Jamaica Constabulary Force established by an Act of Parliament, also set up an office in the area of operation with a specific mandate to investigate complaints of residents against alleged breaches committed by police personnel. Following identification of the victims, post-mortem examinations were conducted in the presence of the Public Defender and an independent pathologist from overseas observed the proceedings.²²

36. Civil society organizations also reacted with alarm to the events that unfolded in May of 2010. Jamaicans for Justice expressed its deep concern “at the rising

²¹ United Nations General Assembly, Human Rights Council, Working Group on the Universal Periodic Review, Ninth session, Geneva, 1-12 November 2010, National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1, Jamaica, 20 August 2010, A/HRC/WG.6/9/JAM/1, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/JM/A_HRC_WG.6_9_JAM_1_E_Jamaica.pdf.

²² United Nations General Assembly, Human Rights Council, Working Group on the Universal Periodic Review, Ninth session, Geneva, 1-12 November 2010, National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1, Jamaica, 20 August 2010, A/HRC/WG.6/9/JAM/1.

numbers of casualties and persons detained resulting from the operations of the security forces in Tivoli Gardens and the wider corporate area” and indicated that “some of the reports of the circumstances of the deaths are horrifying and, if true, constitute a fundamental breach of the law by those sworn to uphold it.”²³ Human rights non-governmental organization Jamaicans for Justice (JFJ) received many incident reports about detentions without charge, shooting injuries, and unprovoked killings by security forces.²⁴ Further, the organization was alarmed by the Jamaica Constabulary Forces’ apparent belief that the state of emergency gave police the authority to detain young men for the purpose of creating an unlawful database of individuals who could then be tracked.²⁵ During a 2011 hearing before the IACHR, it was reported that entire groups of young men were rounded up on the basis of merely being in a certain area or neighbourhood, and the data collected from the over 4,000 people detained was retained under special provisions during the emergency though no charges were filed.²⁶ Children as young as 14 were detained by the police during the emergency, and were held in lock-ups with the general adult detainee population.²⁷ Detention conditions were extremely poor, with 60 people held in a jail cell 8 by 12 feet, or 6-7 children held in a cell made for one.²⁸ Further, the press reported that for every gun found by the Jamaican security forces, ten people were killed.²⁹

37. For its part, Amnesty International called for a thorough investigation into the deaths of dozens of persons during the security operations in West Kingston in May 2010 and recalled that “the high number of killings, the virtual absence of injuries or fatalities of police officers, combined with eyewitness testimonies and other evidence, indicate that many of the killings involved excessive or arbitrary use of force by the police and that, in many cases they amounted to unlawful killings, including extrajudicial executions”.³⁰

²³ Jamaicans for Justice, “Actions of Security Forces and Across the Corporate Areas,” Press Release, May 27, 2010. In the same statement, JFJ indicated that “the necessity for the restoration of law and order...cannot be taken by the Security Forces as an excuse for them, in turn, to break the law...[nor] can it be seen as an excuse for the wanton extralegal killing of Jamaican citizens”. JFJ called for “the immediate return to the rule of law by all”. Available at: http://www.jamaicansforjustice.org/nmcms.php?snippets=news&p=news_details&id=1958.

²⁴ Letter from Jamaicans for Justice to the Executive Secretary of the Inter-American Commission on Human Rights, Re: The State of Emergency in Kingston and St. Andrew – Jamaica, June 11, 2010.

²⁵ Letter from Jamaicans for Justice to the Executive Secretary of the Inter-American Commission on Human Rights, Re: The State of Emergency in Kingston and St. Andrew – Jamaica, June 11, 2010.

²⁶ IACHR, Hearing on “Human Rights Situation in Jamaica,” 141st Regular Session, March 25, 2011, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=122>.

²⁷ Jamaica Gleaner, “Children as Young as 14 Held,” May 27, 2010, available at: <http://mobile.jamaica-gleaner.com/gleaner/20100527/news/news3.php>.

²⁸ IACHR, Hearing on “Human Rights Situation in Jamaica,” 141st Regular Session, March 25, 2011, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=122>.

²⁹ Jamaica Gleaner, “Children as Young as 14 Held,” May 27, 2010, available at: <http://mobile.jamaica-gleaner.com/gleaner/20100527/news/news3.php>.

³⁰ Amnesty International Press Release, “Jamaica Violence Investigation Must Be Thorough” May 27, 2010, available at: <http://www.amnesty.org/en/news-and-updates/jamaica-violence-investigation-must-be-thorough-2010-05-27>. In other accounts published by the media, Yvonne McCalla Sobers, from Families of State

38. As of the date of approval of this report, there are still investigations pending as to the fate of some who disappeared during the state of emergency. On January 19, 2011, the Independent Commission of Investigations (INDECOM) began an investigation into the case of Dale Anthony Davis, a 16 year old boy who was taken by security forces on May 25, 2010 during the emergency and was never seen again.³¹ INDECOM has not yet released a report explaining what happened to the boy. To date, there has been no official accounting for many of the deaths that occurred during the emergency.

39. In this regard, Jamaica's response to the draft version of this report states the following:

The Government maintains, subject to the outcome of investigations which are ongoing, that the force used by members of the JCF during the May 2010 operations in Western Kingston was legitimate and proportional to the threat level and attacks by gunmen on civilians, State properties and members of the security forces. The events of May 2010 are being investigated by the Office of the Public Defender and the Independent Commission of Investigations (INDECOM).

40. Further, the Inter-American Commission has indicated concern about the use of Jamaican Defense Forces and the Jamaica Constabulary Force to undertake joint operations during the emergency. A cornerstone of citizen security is that military forces not be used for civilian crime-fighting. In its report on citizen security, the IACHR stated:

One of the Commission's central concerns with respect to the actions that the member states have taken as part of their policy on citizen security is the following: the involvement of the armed forces in professional tasks that, given their nature, fall strictly within the purview of the police force. The Commission has repeatedly observed that the armed forces are not properly trained to deal with citizen security; hence the need for an efficient civilian police force, respectful of human rights and able to combat citizen insecurity, crime and violence on the domestic front.

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Terrorism stated "If this is what they are going to do in the other communities, I would be very alarmed...we don't need to go in and create more alienation for young people and more reproach for the State". Nancy Anderson of the Jamaican Council for Human Rights said "the security forces should adhere to the law and respect the rights of citizens in conducting their duties." Available at: http://www.jamaicaobserver.com/news/Human-rights-groups-worried_7680819.

³¹ INDECOM Press Release, "INDECOM Takes on Probe into the Disappearance of Tivoli Teen – Dale Anthony Davis," January 20, 2011, available at <http://indec.com.gov.jm/Release/INDECOM%20-%20Missing%20Teen.pdf>.

The Commission's concern over this situation, which occurs in various countries of the region, also is linked to the functioning of the democratic system of government, since

in a democratic system it is essential to make a clear and precise distinction between internal security as a function for the police and national defense as a function for the armed forces, since they are two substantively different institutions, insofar as the purposes for which they were created and their training and preparation are concerned. The history of the Hemisphere shows that, broadly speaking, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances.

Therefore, practice teaches us that it is advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations.³²

2. The evolution of the problem of killings by police

41. While much of the violence in Jamaica is attributed to the high level of criminal gang activity, a significant percentage of killings each year is committed by Jamaican police officers. The IACHR has received multiple, consistent and alarming reports from a variety of sources on the use of deadly force by police in Jamaica. During a hearing in the course of the Inter-American Commission's 131st sessions, the petitioners presented the findings of a report covering the years 2004-2007 which documented the use of deadly force by police forces in Jamaica, alleging that the problem has reached alarming levels.³³

42. Between 1990 and 2000, according to official statistics, an average of 140 people were shot and killed per year by Jamaica's police, a high figure in a country of only 2.6 million people.³⁴ Between 2000 and 2002, the number of deaths rose to 150 per year and then, after decreasing slightly in 2003 and 2004, rose to 168 in 2005.³⁵ With an

³² IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, paras. 100-101.

³³ IACHR, Hearing on "Use of Deadly Force by Police in Jamaica," 131st Regular Session, March 7, 2008, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=12>.

³⁴ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights resolution 2003/53 (Mission to Jamaica), ¶ 22 Doc. E/CN.4/2004/Add.2 (Sep. 26, 2003).

³⁵ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Philip Alston (Follow-Up to Country Recommendations), E/CN.4/2006/53/Add.2, ¶ 46.

additional 110 persons shot non-fatally by police in 2005, the total number of police shooting victims reached the highest level since 1991.³⁶ All in all, between October 1999 and February 2006, at least 700 and possibly more than 800 persons died in the line of police fire.³⁷ According to statistics of the Jamaica Constabulary Force, police shot and killed 272 people in 2007, 224 people in 2008, and 253 people in 2009.³⁸

43. A great number of these deaths occur in circumstances consistent with extrajudicial executions at the hands of police officers. Jamaicans for Justice affirms that between 2004 and 2008, 1057 men, women, and children have been killed by police, a substantial percentage of those marked by fact patterns that suggest summary or arbitrary executions.³⁹ Statistics indicate that this dire situation is only getting worse. In 2010, police forces reportedly killed 385 persons; over one-fifth of those who died violently that year died at the hands of those with State-sanctioned authority and power.⁴⁰ Civil society sources report that victims are often young men or boys from the inner cities who are unarmed and pose no threat to police. The IACHR has been informed that police use measures of excessive force and arbitrary arrest and detention, further aggravating an atmosphere of fear and victimization among the population.

44. Civil society organizations maintain that security forces often conduct operations staged to appear as “shoot-outs” with suspects to justify civilian deaths, during which the police officers implicated are rarely injured or killed. Additionally, civil society organizations also highlight the fact that eyewitness accounts often contradict those of police officers, denying that a “shoot-out” between police and civilians ever took place.

45. At a ceremony held on January 29, 2010 at the BSI, the Public Defender of Jamaica mentioned that fewer people would be killed by police “if there was greater regard for the rules of engagement”. The Public Defender was also quoted as saying that

For too many years, there has been a rate of slaughter of our people by our people themselves that is not only frightening, but demands

³⁶ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Philip Alston (Follow-Up to Country Recommendations), E/CN.4/2006/53/Add.2., ¶ 46.

³⁷ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Philip Alston (Follow-Up to Country Recommendations), E/CN.4/2006/53/Add.2., ¶47; Amnesty International, “Jamaica: First police officer in over six years convicted of murder while on duty”, Feb. 23, 2006, available at <http://www.amnestyusa.org/document.php?lang=e&id=ENGAMR380012006>.

³⁸ Amnesty International, “Public Security Reforms and Human Rights in Jamaica”, AMR 38/001/2009 (Jul. 2009), at 10; Submission from Jamaicans for Justice, For Consideration in the Formulation of the List of Issues by the Human Rights Committee’s Task Force during the 100th Session, 5 (11-29 October 2010).

³⁹ Submission from Jamaicans for Justice, For Consideration in the Formulation of the List of Issues by the Human Rights Committee’s Task Force during the 100th Session, 4-5 (11-29 October 2010), available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/JFJ_Jamaica100.pdf.

⁴⁰ Jamaicans for Justice, “One in Five Killings in Jamaica Committed by Security Forces,” Press Release, Jan. 13, 2010.

reduction [...] Perhaps, with a more determined and conscientious approach to law enforcement, no matter the perils that confront the constabulary and particularly those on the front line, greater regard to the rules of engagement can lead to a reduction in the incidence of fatalities.⁴¹

46. Further, the Inter-American Commission has received disturbing accounts that police officers are wearing masks, gloves, or other clothing to conceal their identities and taping over their badge numbers in order to use violence with impunity. For example, reports in the media emerged about two fatal shootings in which the police officers involved kept their faces covered during the incident.⁴² The Commissioner of the JCF reportedly dealt with the facts as mere dress code violations, and called for all police officers to wear proper uniform.⁴³

47. Jamaicans for Justice has received numerous reports from citizens about police hiding their identity, but members of the NGO themselves reported having seen officers actively obstructing identification.⁴⁴ In one instance, officers refused to hand over identification when asked; another officer used black tape to obscure his badge.⁴⁵

48. There is no domestic legal requirement for officers to display identification as members of the police force. Paragraph 2.24 of the “Book of Rules for the Guidance and Direction of the Jamaica Constabulary Force” requires that officers carry identification at all times and display it when asked, but are not required to display it without a request. This puts the onus on citizens to determine who is confronting them. Given the high rates of police violence, citizens may be reluctant to make such a request, lest they anger the officers before them. In its response to the draft report, the State informs that “Jamaica Constabulary Force Regulations requires that all members in uniform wear their numerals above the right pocket of the uniform shirts”. This is a unique numeral only issued once to any member, which is retired from use at the end of that member’s service in the force. Jamaica further explains that the numeral is a member’s personal regulation number for their tenure in the force, and a visible means of identifying them. The State submits that “members wearing plain clothes are required to carry their ‘police identification’ cards and must first introduce themselves as police officers when acting as such and produce their police identification card to members of the public”. The IACHR calls on the State to properly enforce these rules on identification as an effective solution to the situations reported to it.

⁴¹ Jamaica Gleaner, “Hold your guns – Public Defender tells police to cut deadly force”, Jan. 30, 2010. Available at <http://jamaica-gleaner.com/gleaner/20100130/lead/lead1.html>.

⁴² Jamaica Gleaner, “Commish Warns Police,” Nov. 13, 2010. Available at <http://jamaica-gleaner.com/gleaner/20101113/news/news21.html>.

⁴³ Jamaica Gleaner, “Commish Warns Police,” Nov. 13, 2010. Available at <http://jamaica-gleaner.com/gleaner/20101113/news/news21.html>.

⁴⁴ Letter from Jamaicans for Justice to the Independent Commission of Investigations, Sept. 24, 2010.

⁴⁵ Letter from Jamaicans for Justice to the Independent Commission of Investigations, Sept. 24, 2010.

49. The Inter-American Commission addressed police violence in Jamaica in the case of Michael Gayle,⁴⁶ in which it concluded that Jamaica was responsible for violations of Articles 4, 5, 7, 8 and 25 of the American Convention, in conjunction with violations of Article 1(1) thereof, in respect of the killing of Mr. Gayle by the police and the State's subsequent failure to properly investigate the matter. The report made several recommendations to the State, including granting a remedy to Mr. Gayle's family, undertaking a full investigation of Mr. Gayle's case, and adopting necessary measures to prevent future violations of the nature committed against Mr. Gayle.⁴⁷ In the hearing held during the IACHR's 131st sessions, the petitioners reported that the recommendations issued in the Michael Gayle case had not been effectively implemented by the State.⁴⁸ However, Jamaica's written submission after this hearing identified a number of initiatives and reforms being contemplated to address the issues raised during the hearing.⁴⁹ The

⁴⁶ IACHR, Report No. 92/05, Case 12.418 - Michael Gayle, Jamaica, OEA/Ser.L/V/II.124, October 24, 2005, available at: <http://cidh.org/annualrep/2005eng/Jamaica.12418eng.htm>. In that case, the IACHR found that Michael Gayle died in Jamaica on August 23, 1999 as a result of an assault perpetrated on him by Jamaican security forces, and that the State failed to undertake a prompt, effective and impartial investigation into the circumstances of his death. Based on these conclusions, the Inter-American Commission recommended that the State grant the petitioners an effective remedy, which includes the payment of compensation to Mr. Gayle's next of kin; that the State adopt such legislative or other measures as may be necessary to undertake a thorough and impartial investigation into the human rights violations committed against Mr. Gayle for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations; and that the State take such legislative or other measures as may be necessary to prevent future violations of the nature committed against Mr. Gayle, which should include training for members of Jamaican security forces in international standards for the use of force and appropriate reforms to the procedures for investigating and prosecuting deprivations of life committed by members of Jamaica's security forces. The State accepted responsibility for Mr. Gayle's death and for the violation of his rights to life and physical integrity, but opposed the petition on the remaining grounds and contends that the official investigations were conducted in good faith. Compliance with the IACHR's recommendations remains pending to the date of approval of this report.

⁴⁷ IACHR, Report No. 92/05, Case 12.418 - Michael Gayle, Jamaica, OEA/Ser.L/V/II.124, October 24, 2005, available at: <http://cidh.org/annualrep/2005eng/Jamaica.12418eng.htm>.

⁴⁸ IACHR, Hearing on "Use of Lethal Force by Police in Jamaica", March 7, 2008. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=31>.

⁴⁹ In its September 2010 submission regarding the follow-up on compliance of the recommendations in the Michael Gayle case, the State informed that "interim facilities have now been identified for the Special Coroner's Court and that the challenge being faced with respect to the Special Coroner is being addressed". The State added that a proposed "whistle blower" legislation is before a Joint Select Committee of Parliament under the name "The Protection Disclosures Act, 2010", which has the intention to encourage and facilitate employees making disclosures of improper conduct in the public interest; to regulate the reception and investigation of disclosures of improper conduct; and to protect employees who make such disclosures. Further, the State indicated its commitment to "ensuring that legislative measures are taken to prevent the future violations of the nature committed against Michael Gayle" and in that regard it points out that the Independent Commission of Investigations Act, 2010" was enacted and came into operation on April 15, 2010. As explained by the State:

The purpose of the Independent Commission, which replaces the Police Public Complaints Authority, is to undertake independent investigations concerning actions by members of the security forces and other agents of the State that result in death or injury to persons or the abuse of the rights of persons.

An important feature of the Independent Commission is that it is not subject to the direction or control of any other person or authority pursuant to section 5 of the Act. This will ensure that the duties of the Commission are executed without interference.

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Inter-American Commission awaits further news of the implementation of its recommendations.

50. The death of Ian “Ching-Sin” Lloyd has also been reported as illustrative of a pattern of police violence and impunity. Civil society organizations informed the Inter-American Commission about the facts surrounding Mr. Lloyd’s death.⁵⁰ On July, 30, 2010, police reported they had shot and killed Mr. Lloyd after he had stabbed at one of the officers who was present after Mr. Lloyd allegedly stabbed and killed his common-law wife. However, video taken at the time of the shooting and widely disseminated showed Mr. Lloyd prone on the ground, being beaten with batons, and then shot at close range by a police officer while incapacitated.⁵¹ The *post mortem* exam on the body found that Mr. Lloyd had been virtually crippled at the time of the shooting.⁵² The officer was charged with murder, but as of late 2010 there had been no conviction, and news reports claim that prosecutors have struggled to build a case.⁵³

51. Following her 2003 visit to Jamaica, the UN Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions reported that “there are [still] too many incidents where the police are reported to use unnecessary violence... [and use] direct, deliberate and excessive use of force without any provocation.”⁵⁴ Even accounting for the fact that Jamaican police have operated in a high crime atmosphere, “there are [still] too many incidents where the police are reported to use unnecessary violence which often results in the death of suspects, or even of innocent people.”⁵⁵

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Further, the function of the Independent Commission will not be performed by members of the security forces. In this regard, it removes the notion of the police being unwilling or incapable of conducting fair and impartial investigation[s] of other police and [places] this responsibility with persons who are not members of the security forces.

⁵⁰ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, “The State of Human Rights in Jamaica Since the State of Emergency 2010”, Report to the IACHR, March 25, 2011, at 5. Available at: <http://www.jamaicansforjustice.org/docs/110406J2GF.pdf>.

⁵¹ TVJ News, July 31, 2010, available at <http://www.youtube.com/watch?v=MC54pcNNaR0>.

⁵² Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, “The State of Human Rights in Jamaica Since the State of Emergency 2010”, Report to the IACHR, March 25, 2011, at 5. Available at: <http://www.jamaicansforjustice.org/docs/110406J2GF.pdf>.

⁵³ RJR News, “Policeman’s Murder Trial Runs into Difficulty,” Nov. 19, 2010. Available at <http://rjrnewsline.com/news/local/policeman%E2%80%99s-murder-trial-runs-difficulty>.

⁵⁴ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights resolution 2003/53 (Mission to Jamaica), Doc. E/CN.4/2004/Add.2, Sep. 26, 2003, ¶ 19.

⁵⁵ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights resolution 2003/53 (Mission to Jamaica), Doc. E/CN.4/2004/Add.2, Sep. 26, 2003, ¶ 61.

52. The State observed the following in its response to the IACHR draft report:

The context of crime and violence in Jamaica must be borne in mind when considering the issue of alleged police killings in Jamaica. While this does not suggest an abdication of the obligation by the State or its agents to protect its citizens, it contextualizes the environment in which law enforcement officials have to operate on a daily basis, given the existence of well-armed gangs involved in drugs and narco-trafficking with the resources to equip themselves with more sophisticated weaponry than the security forces.

Jamaica accepts that challenges persist in respect of allegations of abuse by agents of the State but it is important to note that not all killings by police officers are extrajudicial killings, as casualties result from justifiable use of force by the police in the lawful execution of their duties or for the purpose of self-defense.

53. To illustrate its point, the State submitted the following tables prepared by the Jamaica Constabulary Force:

TABLE 2: MAJOR CRIMES COMMITTED FROM 2009 TO 2011

OFFENSE	2011	2010	2009	TOTAL
Murder	1133	1442	1683	4258
Shooting	1338	1517	1666	4521
Rape	787	704	701	2192
Carnal Abuse	730	732	592	2054
Robbery	3069	2851	3024	8944
Break-Ins	3480	3783	3795	11058
Larceny	381	382	510	1273
GRAND TOTAL	10918	11411	11971	34300

TABLE 3: POLICE OFFICERS CONVICTED FOR THE PERIOD 1999.07.01 TO 2012.03.09

OFFENSE	NUMBER OF POLICE OFFICERS CONVICTED	SENTENCING OR FINES RANGE
Wounding	11	6 months to 6 years or fine from \$3000.00 to \$150,000.00
Murder	3	Ten (10) years to life imprisonment
Shooting with intent and corruption	1	Seventeen (17) years with hard labor
Illegal possession of firearm, etc.	1	Twenty (20) years for each offense
Assault	3	Two (2) weeks to eighteen (18) months

54. The IACHR notes that the official information in Table 2 *supra* reveals a marked decrease in the number of murders committed in Jamaica between 2009 and 2011. The Inter-American Commission values this change and hopes that Government actions to improve the citizen security situation in Jamaica continue to produce positive results.

55. The Inter-American Commission also recognizes that within this context of violence and crime acknowledged by the State in its response, police officers, many of whom serve with dedication and place themselves in harm's way to protect their communities, also become victims. Government sources informed the IACHR that over the last 12 years, an average of one police officer has been killed every month, and that in the last four years, 20 police officers have been killed per year.⁵⁶ In 2008, 12 police officers were killed,⁵⁷ and in 2009, 11 police officers died in the line of duty.⁵⁸

56. The Inter-American Commission has received some reports of greater receptivity on the part of the police to dialogue with representatives of civil society about needed reforms. Evidence of this responsiveness has included recent developments in community-based policing. Former Police Commissioner Hardley Lewin nominated a Deputy Divisional Commander whose primary responsibility was to introduce community policing to communities throughout Jamaica.⁵⁹ It should also be noted that during 2010, the Jamaica Constabulary Force handled 397 disciplinary cases involving its members.⁶⁰ In this respect, Police Commissioner Owen Ellington said the number of disciplinary actions initiated by the force is a clear sign that it is serious about weeding out corrupt and unprofessional members. He also warned that he would "not tolerate acts of unprofessionalism or any corrupt policeman or woman, whatever their rank, in the police force".⁶¹

57. Despite these positive measures, the Inter-American Commission expresses its concern over the relatively unchallenged system of impunity afforded to police officers who have killed. While in recent years police killings have accounted for a fifth of all violent deaths in Jamaica, the official information supplied by the Jamaican State shows that only three police officers have been convicted of murder since 1999. The IACHR notes that this situation of impunity significantly undermines the credibility of the police and the confidence of the public. This lack of credibility, in turn, seriously limits the

⁵⁶ IACHR, Press Release 59/08. Available at: <http://www.cidh.org/Comunicados/English/2008/59.08eng.htm>.

⁵⁷ Amnesty International, "Public Security Reforms and Human Rights in Jamaica", AMR 38/001/2009 (Jul. 2009), at 10.

⁵⁸ "Jamaica Sets Crime Record: 1,680 Killed in 2009," Cay Compass News, Jan. 10, 2010. Available at <http://www.caycompass.com/cgi-bin/CFPnews.cgi?ID=10388550>.

⁵⁹ 2009 AI Public Security Reforms Report, *supra* note 8, at 12.

⁶⁰ Jamaica Gleaner, "Jamaica Constabulary Force disciplines almost 400 cops in 2010", January 10, 2011, available at <http://jamaica-gleaner.com/gleaner/20110110/lead/lead5.html>.

⁶¹ Jamaica Gleaner, "Jamaica Constabulary Force disciplines almost 400 cops in 2010", January 10, 2011, available at <http://jamaica-gleaner.com/gleaner/20110110/lead/lead5.html>.

capacity of the police to respond to crime, creating a vicious cycle that must be broken if progress is to be made in the restoration of peace and order.

58. In this regard, the following chart presented by the Jamaican State reveals the high rate of acquittals and pending arrests:

Table 4: POLICE OFFICERS ARRESTED AND CHARGED FOR THE PERIOD 1999.07.01 TO 2012.3.09

CATEGORY OF OFFENSE	NUMBER OF POLICE OFFICERS ARRESTED
Wounding	102
Murder	98
Shooting with intent	5
Manslaughter	12
Dangerous Drugs	7
Illegal possession of firearm	6
Malicious destruction	2
Discharging Firearm within forty yards of a public place	5
Corruption	7
Burglary	3
Attempting to pervert the course of justice	4
Assault	16
TOTAL	267

ARRESTS	CONVICTIONS	ACQUITTED	DECEASED	ARREST PENDING
267	19	161	1	79

59. Jamaica responds that “where there is an allegation of the unlawful use of force by police men that results in death, there is an investigative process that is carried out, as previously explained” and that “if there is sufficient evidence, it results in the officer being charged and prosecuted by the DPP.” The State affirms that “the guilt or innocence of the person is determined by the trial process in which the State does not intervene in light of its obligation to respect the judicial process” and that “the low rate of conviction for policemen is not a reflection of the failure of the judicial process.”

60. In this regard, the Inter-American Commission must remind Jamaica that its obligations under the American Convention include the duty to investigate, prosecute, punish and remedy human rights violations that are crimes under national or international law when faced with allegations of extrajudicial executions. Accordingly, the effective investigation of an extrajudicial killing is an inseparable part of a state’s duty to protect the right to life. Where there is a pattern of extrajudicial killings, the failure to conduct effective investigations creates an environment of impunity, which promotes further killings and human rights violations. The IACHR draws attention to deficiencies in the

investigation in these cases, as explained in Chapter III of this report, which deals with the administration of justice. A number of these deficiencies are structural in terms of insufficient resources, as well as in terms of the way these investigations are carried out. For example, the next chapter will look at the problem of lack of staff and resources for Coroner's Courts, as well as for forensic pathologists, ballistic experts, and other specialists whose work is essential for an effective investigation.

61. The State of Jamaica also previously informed the IACHR that the JCF has developed comprehensive training program for officers, including training on human rights.⁶² In its response to the draft version of this report, the State informed the following:

All members of the Jamaica Constabulary Force are trained upon entering the Force in the fundamental rights and freedoms of individuals that are enshrined in the Constitution, most importantly the right to life. This right is further highlighted and emphasized in the "Use of Force Policy" of the Force which is drafted based on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the United Nations. Administratively, these issues form part of all briefings and debriefings for all operations conducted by the police. Additionally, members are recertified annually in the use and care of service firearms, during which the principles of the "Use of Force" policy are reiterated. Should, however, deadly force be used by a member, the policy dictates that an administrative review and a criminal investigation are conducted separately. The members involved are removed from operational duties pending the outcome of the administrative review and in some instances the investigation. The purpose of the administrative review is to determine if Force policy was breached, and to audit the adequacy of training and supervision. This may result in disciplinary sanctions, which may include interdiction, suspension or expulsion, if any deviation from Force policy is identified. Also members identified to be involved in questionable shootings and or multiple shootings are routinely removed from operational duties.

62. The Inter-American Commission welcomes all of these much needed steps, and it will continue to monitor events in Jamaica pursuant to its mandate under the OAS Charter, the American Convention, the Statute and the Rules of Procedure. On the basis of the analysis included in this chapter, as well as on its Report on Citizen Security and Human Rights, the IACHR recommends to the Jamaican State that it:

- a. Design and implement comprehensive public policies on citizen security, and develop the institutional capacity within the public sector, as well as the adequate human, technical, and economic resources to carry them out effectively. This includes improving the selection and training process

⁶² Submission by the Government of Jamaica, for Consideration on the IACHR Hearing on the Situation of Human Rights in Jamaica, 141st Regular Period of Sessions, Mar. 25, 2011.

for the personnel of the relevant institutions, such as the police, the members of the judicial branch, the Department of Public Prosecutions and the prison system.

- b. Establish and implement accountability systems and procedures that apply to all authorities with a role in implementing citizen security, with internal and external control mechanisms, in order to strengthen the institutions of democratic government and foster transparency in the exercise of public office.
- c. Take all measures to combat impunity, including the reform of domestic laws, administrative regulations, procedures and plans of operation of the institutions with jurisdiction over citizen security policies, to ensure that such institutions are able to prevent, investigate and punish any human rights violation resulting from acts of violence or crime, or from the action or omission of State agents.
- d. Carry out full, impartial and effective investigations into all cases of violent death and injuries, especially where the security forces are involved, such as those that took place in the last week of May 2010 in West Kingston, in order to prosecute and punish those responsible and ensure reparation to the victims or their families.
- e. Adhere strictly to the provisions of Article 27 of the American Convention whenever the authorities decide to apply a suspension of guarantees under a declared state of emergency, including an immediate report to the other State parties to that international instrument, with respect to the measures suspended, the respective reasons, and duration.
- f. Adopt administrative, legislative or other measures necessary to allow for rapid and proper care to victims of violence and crime, and to ensure the special standards of protection needed for particularly vulnerable persons or groups such as children and adolescents, women, and migrants and their families.
- g. Ensure that the Jamaica Constabulary Force and all security bodies act with due diligence to prevent, deter, and lawfully suppress acts of violence or crime as part of the State's obligation to protect and guarantee the enjoyment of human rights.
- h. Modernize and professionalize the police force with measures that include:
 - i. bringing its institutional philosophy into conformity with international human rights standards and principles related to citizen security;

- ii. objective procedures for recruiting and selecting its personnel;
 - iii. implementing programs geared to professionalizing the security forces, with a framework of clear and precise rules and regulations; and
 - iv. developing skills in police intelligence work, with a legal framework that conforms to international standards on human rights to assist in preventing violence and crime, especially in the case of organized crime.
- i. Adopt laws and measures to clearly define and distinguish national defense as the function of the armed forces, and citizen security as a function of the police.

CHAPTER III ADMINISTRATION OF JUSTICE

A. Introduction

63. The Inter-American Commission has been closely following the situation of the administration of justice in Jamaica, and much of its visit and subsequent monitoring has been focused on this matter. There is broad consensus in Jamaica on the urgent need to reform the judicial system, 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 Jamaica has developed a Justice System Reform Policy Agenda which attempts to address the problems that plague the justice system, it has yet to produce concrete results leading to an increase in access to justice.⁶³

64. At the conclusion of its visit to Jamaica, the IACHR stated that justice in that country “is administered with one standard for the rich and another for the poor”.⁶⁴ Reports received before, during and after the visit indicated that “the police and judiciary frequently treat persons from socioeconomically disadvantaged sectors of society with discrimination and disrespect”⁶⁵ and that the problem remains severe in spite of certain specific initiatives from the state and civil society sectors aimed at improving the situation.

65. There is link between the denial of justice, poverty and discrimination in Jamaica, as will be explained in the section of this chapter that focuses on access to justice. In the preliminary observations at the end of the visit, the Inter-American Commission stated that “the main victims of violent crime in Jamaica are people living in poor, overcrowded inner-city areas and affected by high rates of unemployment and lack of access to education, health and housing”.⁶⁶ The IACHR also highlighted that more than one third of the population of Kingston lives in these communities, which have been neglected by the State for many years, and which have suffered the proliferation of ruthlessly violent armed gangs. It is highly troublesome that the large part of the population of Jamaica affected by these levels of violence not only lacks protection from the State, but also does not have proper access to the legal recourses to guarantee their fundamental rights and freedoms.

66. Various international and non-governmental organizations underscore the deficiencies of the Jamaican justice system with respect to cases involving that country’s security forces and allegations of excessive use of force against civilians. Such deficiencies include the lack of effective, prompt, and thorough criminal investigations, the

⁶³ Submission by the Government of Jamaica for consideration on the IACHR hearing on the situation of human rights in Jamaica, 141st regular period of sessions, March 25, 2011.

⁶⁴ IACHR, Press Release No. 59/08, December 5, 2008.

⁶⁵ IACHR, Press Release No. 59/08, December 5, 2008.

⁶⁶ IACHR, Press Release No. 59/08, December 5, 2008.

failure of judges and prosecutors to treat cases with impartiality, and irregularities in the selection process for juries. Reports indicate that the overwhelming majority of cases of police abuse denounced to Jamaican authorities are not resolved, allegedly due to irregularities and partiality in the investigation and prosecution of cases of abuse of force by State agents. Organizations report that this has resulted in a situation of widespread and chronic impunity for human rights violations by State agents.

67. While in Jamaica, the IACHR heard about high levels of impunity for violent crime and, in particular, for police shootings in circumstances which have never been clarified. The Inter-American Commission identified problems at all stages of post-murder investigations that contribute to this reality of impunity, including lack of impartiality of the investigating institution, tampering with evidence, and severe lack of resources. Additionally, the IACHR was able to verify how problems in the different stages of criminal investigations form a chain of causality, with deficiencies in one stage creating deficiencies in later stages.

68. The Inter-American Commission also identified serious flaws in the initial investigations conducted by the Bureau of Special Investigations (BSI) in cases of violent deaths. The BSI is a unit within the Jamaican Constabulary Force and, as such, not an independent mechanism for investigating police killings. The information received by the IACHR during its visit to the BSI indicates that this office is severely plagued by a lack of material resources and limited personnel, and its effectiveness is also restricted by the long distances between its headquarters and crime scenes. The Inter-American Commission was also informed that the BSI operates under severe delays, resulting in the tampering with or distortion of evidence at crime scenes by local officers are often implicated in the killings themselves. Additionally, the BSI is unable to properly obtain and analyze evidence, and its officers are often inadequately trained to carry out investigations appropriately.

69. The process of forensic examination and analysis is also severely flawed in Jamaica, greatly inhibiting the gathering of evidence during a BSI investigation. The National Forensic Laboratory and Jamaica's Pathology Unit are --like the BSI-- both under the direct control of the Ministry of National Security, which creates similar questions of independence and impartiality when police shootings are involved. According to the information gathered by the IACHR during its visit to Jamaica, the Laboratory is seriously understaffed and underfunded, and forensic pathologists are extremely overburdened. The failure to conduct timely and thorough autopsies leads to the possibility of distortion of evidence through manipulation or decay of bodily matter. Also, proper procedures for conducting autopsies are rarely followed, resulting in a failure to collect vital evidence for judicial proceedings. The Forensic Department additionally lacks adequate equipment and facilities, including X-Ray machines and proper refrigeration for bodies.⁶⁷

⁶⁷ The State pointed out in its response to the report that the Forensic Unit does not store bodies, and that accordingly the IACHR's observation would not be applicable. The Inter-American Commission clarifies that this was not an observation of an existing facility in the Unit, but rather the need to count with one to be able to work more effectively.

70. Following the police investigation, the Department of Public Prosecutions (DPP) decides whether to prosecute a case or not. The DPP has often been accused of institutional bias against prosecuting police, based on the fact that very few cases are ever prosecuted against police for excessive use of lethal force or unlawful killings. In its response, the State “rejects any suggestion that implies that there is a deliberate attempt, including by the DPP, to protect agents of the State.” It explains that “the DPP is constitutionally charged with instituting and undertaking criminal proceedings” and that it “will take into account the investigations undertaken by relevant bodies in exercising his/her constitutional duty to determine whether to prosecute (...) the DPP, in the exercise of his/her authority, is not subject to the control or direction of any other body.” As indicated previously, the IACHR’s considerations and conclusions on this matter and the others throughout the report arise from the totality of the information it has received from diverse sources, as part of its assessment of the situation in Jamaica. The Inter-American Commission again stresses the importance of serious action by Jamaica and --for that matter-- all Member States of the OAS to combat impunity for human rights violations, including decisive and effective action by the authorities charged with the investigation and prosecution of such crimes.

71. In this regard, it should be highlighted that persistent levels of deadly violence and impunity, including the lack of accountability for abuses of the police, have created an environment of fear and intimidation, especially concerning the participation of witnesses in judicial proceedings.⁶⁸ According to information received by the IACHR, witnesses are routinely harassed and intimidated, sometimes by police officers themselves; in certain cases witnesses are disappeared or killed.⁶⁹ This intimidation and lack of protection, in addition to inadequate investigations, can lead to a failure to prosecute based on a supposed lack of evidence, despite clear and even overwhelming indicia of criminal responsibility.

72. Other pervasive issues plague the administration of justice in Jamaica. Persons from socioeconomically disadvantaged sectors of society are treated with discrimination and disrespect. Competent legal representation is largely unavailable. Severe delays are pervasive at every stage of the investigatory and judicial process. Procedures are seriously outdated and resources are restricted. However, there has been

⁶⁸ A June 2011 press account quoted the Director of Public Prosecutions of Jamaica saying that “witness intimidation is at its highest;” in that same opportunity the head of the DPP talked about the need for “more resources to be channeled into the Government’s witness protection program, especially given the increase in the number of key witnesses to major crimes who refuse to enter [it].” Jamaica Observer, “DPP Laments lack of resources for witness protection,” June 19, 2011, available at: http://www.jamaicaobserver.com/news/DPP-laments-lack-of-resources-for-witness-protection_9026572#ixzz1h7BKUbt6. See also, Jamaican Justice System Reform Task Force Final Report, June 2007, para. 42, p. 13. Available at http://moj.gov.jm/jamaicanjustice/pdf/jisrtf_report_final.pdf.

⁶⁹ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, “Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007,” March 20, 2008, pp. 12-13, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf See also, Jamaican Justice System Reform Task Force Final Report, June 2007, para. 42, p. 13. Available at http://moj.gov.jm/jamaicanjustice/pdf/jisrtf_report_final.pdf.

some progress in the past few years with reforms that --if properly implemented-- could result in positive changes for the Jamaican justice system.

73. The IACHR also recognizes the positive steps taken with the adoption of the Independent Commission of Investigations Act, legislation which established “an Independent Commission to investigate any excesses and abuses alleged to have been committed by members of the security forces and other agents of the State such as correctional officers.” However, the Inter-American Commission expresses concern that the Act does not take a broad enough view of potentially harmful and abusive offenses by police officers and that the Independent Commission (INDECOM) is not given the power and authority it needs to be truly effective (INDECOM will be addressed more fully below). Given the context of witness intimidation and endangerment in Jamaica, this provision provides ample potential for police officers to continue the pattern of abuse, contributing to the pervasively existing fear of Jamaican citizens of participating in judicial proceedings and seeking judicial remedies.

74. The Jamaican Justice System Reform Task Force (JJSRTF) critiqued the Jamaican justice system in its 2007 report, stating that one of the major barriers to reform within the judicial system was a “general culture of delay,”⁷⁰ which was also noted by the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.⁷¹ The Report further stated that those wishing to access the Jamaican judicial system are provided with inadequate redress or due process because of a general inaccessibility to legal information.⁷² In its 2003 report on Jamaica, the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions also remarked upon this issue:

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.⁷³

75. The Inter-American Commission is also troubled by the lack of state-provided legal assistance and legal aid. There is a shortage of attorneys willing to serve as duty counsel⁷⁴ or provide legal services, primarily because of a history of long delays of

⁷⁰ Jamaican Justice System Reform Task Force Final Report, June 2007, at 9, 15. Available at http://moj.gov.jm/jamaicanjustice/pdf/jjsrtf_report_final.pdf.

⁷¹ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights resolution 2003/53 (Mission to Jamaica), Doc. E/CN.4/2004/Add.2, Sep. 26, 2003, ¶ 2.

⁷² Jamaican Justice System Reform Task Force Final Report, June 2007, at 10, 12. Available at http://moj.gov.jm/jamaicanjustice/pdf/jjsrtf_report_final.pdf.

⁷³ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights resolution 2003/53 (Mission to Jamaica), Doc. E/CN.4/2004/Add.2, Sep. 26, 2003, ¶ 75

⁷⁴ Duty counsel provides legal assistance to those who cannot afford representation.

payment and inadequacies of fees.⁷⁵ Large numbers of police stations do not have a list of duty counsel or do not know they have an obligation to obtain counsel for detainees.⁷⁶ Many persons are detained for days or weeks without being given access to duty counsel – Jamaicans for Justice informed the IACHR about one case of a man detained for 4 weeks, who was ultimately released without charge, but was never once told he had the right to an attorney.⁷⁷ Furthermore, it is difficult for citizens to obtain legal aid outside of urban areas.⁷⁸ The Inter-American Commission has learned that despite provisions that guarantee the right to an attorney, there is a widespread denial of counsel to those who need representation due to a lack of awareness in the Jamaican population, combined with the common practice of police not informing detainees about such right.⁷⁹

76. Furthermore, the Charter of Fundamental Rights and Freedoms passed by the Jamaican Parliament in 2011 guarantees the right to *retain* counsel, but does not explicitly state the right to counsel for those who cannot afford one.⁸⁰ The IACHR is concerned that this falls short of international human rights standards and undermines the due process rights of those of lower economic status. In this regard, the State recognizes in its response that the legal assistance provided to those who are unable to afford it is inadequate; however, it affirms that such assistance is not denied to those who need it, and explains the efforts being undertaken:

In excess of two thousand (2000) persons assigned Legal Aid have their matters completed each year. More than four hundred (400) Jamaicans benefit annually from Duty Counsel representation. Duty Counsel provides representation to persons in custody, without charge, scheduled for Identification Parade or Question and Answer session. Duty Counsel may also apply for station bail or Court bail. Duty Counsel representation ends at the first Court date and is absolutely Free of Cost to the recipient. The Legal Aid Council's Panel of Attorneys enlists approximately three hundred and fifty-two (352) lawyers who are authorized to provide legal representation for persons who are unable to afford private retention of Counsel. Approximately one hundred and sixty (160) attorneys provide representation in criminal matters. Any person charged with a criminal

⁷⁵ Jamaicans for Justice, Submission 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, 21.

⁷⁶ Jamaicans for Justice, Submission 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, 21.

⁷⁷ Jamaicans for Justice, Submission for consideration during the IACHR Hearing on the Situation of Human Rights in Jamaica, 141st Regular Period of Sessions, March 25, 2011.

⁷⁸ Jamaicans for Justice, Submission for consideration during the IACHR Hearing on the Situation of Human Rights in Jamaica, 141st Regular Period of Sessions, March 25, 2011.

⁷⁹ IACHR, Hearing on "Human Rights Situation in Jamaica," 141st Regular Session, March 25, 2011, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=122>.

⁸⁰ An Act to Amend the Constitution of Jamaica to Provide for a Charter of Fundamental Rights and Freedoms and for Connected Matters, Chapter III 14(2)(d).

offence is entitled to legal representation in circumstances where he or she cannot afford to pay the lawyer privately.

77. Many of the inhabitants of Jamaica, especially those in the lower socio-economic strata who are the most affected by human rights violations, do not understand the complex legal structures which comprise the Jamaican system, lack faith in the judicial system, and have a general perception “that individuals are not accorded equal treatment by the justice system nor do they receive the equal benefit and protection of the law.”⁸¹ The JJSRTF found that a large part of the population of Jamaica considered that there was an urgent need for reform of the justice system, which was described as “on the brink of collapse”.⁸²

78. In its response to the draft report, the State recognizes some of the problems identified by the IACHR:

Jamaica accepts that the justice system is in need of reform and that there are serious challenges to be overcome in order to improve the administration of justice. Jamaica reiterates its commitment to addressing these challenges and denies any suggestion that there is a deliberate attempt to protect perpetrators of human rights violations, including agents of the State. The State believes that efforts at reform have led to an improvement in access to justice. However, one of the perennial weaknesses in countries like Jamaica and others of its size is the inability to consistently produce up-to-date disaggregated statistics. This is due to a lack of capacity. Therefore, the absence of such statistics should not automatically be regarded as an indication of failure.

79. Following is the analysis of specific issues relating to the administration of justice identified by the Inter-American Commission during its visit.

B. Access to justice

80. While in Jamaica, the IACHR received consistent reports that the police and judiciary frequently discriminate against persons from socioeconomically disadvantaged sectors of society and treat them with disrespect. Sources reported on specific initiatives of both the state sector and civil society aimed at improving the situation, but it remains a severe problem. The information received by the IACHR indicates that justice is administered in Jamaica with one standard for the rich and another for the poor.

⁸¹ Jamaican Justice System Reform Task Force Final Report, June 2007, at 10. Available at: http://moj.gov.jm/jamaicanjustice/pdf/jjsrtf_report_final.pdf.

⁸² Jamaican Justice System Reform Task Force Final Report, June 2007, para. 47, p. 14. Available at: http://moj.gov.jm/jamaicanjustice/pdf/jjsrtf_report_final.pdf.

81. In recognition of major failures of the justice system, the Jamaican government created the Jamaican Justice System Reform Task Force (JJSRTF) in 2006 to study the situation of the courts and issue recommendations for their improvement.⁸³ The IACHR emphasizes the importance of the work done by the JJSRTF and the urgent need to implement key recommendations contained in its Final Report released in June 2007.

82. The JJSRTF described the status of the court system as too unequal because of the “lack of equality between the powerful, wealthy litigant and the under-resourced litigant.”⁸⁴ Among the main problems of the judiciary identified by the JJSRTF were the lack of respect usually accorded to individuals who come in contact with the justice system (disrespect for their personal dignity, their time, and their right to privacy); barriers to accessing the justice system, including the inaccessibility of legal information, legal assistance and the courts; and the perception that individuals are not accorded equal treatment by the justice system and that they do not receive the equal benefit and protection of the law.⁸⁵

83. In this regard, a recent analysis of the judiciary system in Jamaica commissioned by that country’s Ministry of Justice indicated that “access to justice is an increasingly complex and important strategic issue for the Courts” and that “the economic disparity between higher-income residents, often well educated, and low-income residents with little job security or prospects, presents challenges for the Courts in providing equal access to justice.”⁸⁶ In the same study it was concluded that the Courts of Jamaica had to “continually strive to identify and eliminate barriers to access, assist personnel in understanding persons with different needs, and provide appropriate information and services to ensure accessibility” in order to establish a justice system accessible to all persons, regardless of their socio-economic status, gender or ethnicity.

84. In its response, the State expresses its strong objection to what it considers an “attempt to cast doubt on the impartiality of the Jamaican judiciary” and affirms that the “Jamaican judiciary has always demonstrated the highest level of integrity and impartiality and the Commission should, therefore, challenge those making claims of bias to provide evidence of the alleged bias or discrimination.” Again, the IACHR finds it necessary to underscore the fact that its conclusions are based on numerous sources and confirmed by official documents such as the JJSRTF Report and other studies commissioned by the Government itself, as quoted above.

⁸³ Jamaican Justice System Reform Task Force, Terms of Reference for Restorative Justice Working Group (2006), available at: http://www.cba.org/jamaicanjustice/pdf/terms_restorative.pdf.

⁸⁴ Jamaican Justice System Reform Task Force Final Report, June 2007, para. 49, p. 14. Available at: http://moj.gov.jm/jamaicanjustice/pdf/jisrtf_report_final.pdf.

⁸⁵ Jamaican Justice Reform Task System Final Report, June 2007, pp. 8-9. Available at: http://moj.gov.jm/jamaicanjustice/pdf/jisrtf_report_final.pdf.

⁸⁶ Jamaica Justice System Reform Policy Agenda Framework, prepared for the Ministry of Justice by Dennis Darby, Independent Legal Consultant, January 28, 2009.

85. The JJSRTF Report further explained why access to justice such a complex issue in Jamaica:

Effective access to the justice system is diminished by various kinds of barriers to the system itself. Barriers are a result of a variety of diverse elements. Some barriers are financially-related and due to issues such as systemic delay, process and procedural complexities, prohibitively high litigation costs, losses of opportunity and even income losses. Other access issues are due to geography and distances. Some barriers are based on education and even on diversity issues of culture and language. Some are procedural and rule-based barriers that increase complexity, resulting in delay and make prohibitive time demands on citizens seeking effective and efficient access to the justice system. Still other barriers are a function of the citizenry's overall lack of knowledge.⁸⁷

86. The Inter-American Commission is also seriously concerned with the limitations on access to competent representation for people arrested or brought before the courts. 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 as previously stated, legal aid is not always available. Moreover, for those who are able to obtain such aid, there are insufficient standards or supervision in place to ensure uniform quality of representation. The IACHR 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.

87. The IACHR is also troubled by severe delays in the criminal justice process. Persons who have been arrested and detained may have to wait days, weeks or even months before they are even presented before a judicial officer.

88. Users of the justice system reported consistently that access to a remedy is neither simple nor prompt. While government authorities indicated that additional judges had been hired, a number of judicial authorities reported that the demand exceeds their capacity. There is a reported backlog of 400,000 cases, delaying justice and overburdening the judiciary.⁸⁸ Just with respect to the mechanics of the process, lawyers reported that it may take a year to produce the transcript from the court of first instance that is necessary to present a case before the Court of Appeals.

⁸⁷ Jamaican Justice Reform Task System Final Report, June 2007, para. 356, p. 141. Available at: http://moj.gov.im/jamaicanjustice/pdf/jjsrtf_report_final.pdf.

⁸⁸ United Nations Human Rights Committee, List of issues to be taken up in connection with the consideration of the Third Periodic Report of Jamaica, CCPR/C/JAM/Q/3, Nov. 22, 2010; see also Jamaica Gleaner, "Crippled Courts – Over 400,400 Cases Pile Up," Mar. 28, 2010, available at <http://mail.rhodes-caribbean.com/gleaner/20100328/lead/lead12.html#>.

89. The Jamaican court system suffers from serious deficiencies in specialized training and access to information. The IACHR observed that some judges do not have current copies of the legislation in force that they must apply, and that some don't have access to computers or the internet. The Inter-American Commission was informed of an instance in which legislation that was changed in 2004 was nonetheless applied unchanged until 2005 because judges lacked access to the updated law.

90. In addition, the Inter-American Commission highlights the importance of carrying out the process of reform with transparency, consultation with civil society, and compliance with international standards. In this regard, even though the government indicated that reform bills are public documents, civil society representatives expressed having had some difficulty in obtaining them.

91. The IACHR has also received information about other initiatives that have been developed and implemented by the Ministry of Justice to meet the pressing challenges before the judiciary. Certain features of these reform initiatives may be helpful in improving the effectiveness of the justice system, such as the creation of a Special Coroner. Other reform bills, such as the extension of the period of detention without bail to 60 days, may only exacerbate the serious problems of due process and prolonged arbitrary detention.

92. Jamaica informed in its response that "several measures are being employed to reduce case backlogs, encourage speedy trials and enhance the delivery of justice." The measures include "the provision of additional court rooms; increasing the number of Supreme Court Judges, Masters, Resident Magistrates, Prosecutors and other staff in the Supreme Court and the Office of the Director of Public Prosecutions; and amending the *Jury Act* to, inter alia, widen the pool from which jurors can be selected." Finally the State indicates that "another tool being used in reducing case backlog is the application of Restorative Justice Practices" and that "night courts have also been instituted to assist in clearing case backlogs." The State referred to the following additional measures:

Consideration is being given to the recommendation for amendments to the Jurisdiction of the Supreme Court, Resident Magistrate's (RM) Courts and the Court of Petty Sessions, thereby allowing greater access to justice in the lower courts and alleviating the caseload in the High Court. Critical considerations also include the increase of the jurisdictional limit of the RM Court in order to facilitate the transfer of matters with a value below this limit from the Supreme Court to the RM Courts; the increase in the limit for small claims to allow for more matters that are not now heard as small claims to be heard in the RM Court; and the increase in the Jurisdictional Limit of the Petty Sessions Courts to alleviate the burden of citizens who would otherwise have to appear in the Resident Magistrate's Court. It is recognized, however, that more needs to be done to advance the process.

93. The Inter-American Commission values this updated information supplied by the State that allows it to complete its analysis and to understand the positive actions undertaken by the authorities to advance toward a more effective Judiciary in Jamaica.

C. Police impunity

94. Impunity in cases where there are allegations of excessive use of force by police is of special concern to the Inter-American Commission. In Jamaica, impunity for unlawful police killings has been near absolute and is an ongoing reality spanning decades. In 2006, the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “from October 1999 to February 2006, not a single police officer was found guilty on charges related to the fatal use of force, although more than 700 persons had been killed by the police during these six years.”⁸⁹ The Special Rapporteur additionally concluded that “while the number of persons shot by the police reached a new all-time high in the year 2005, the inexcusable situation of nearly complete impunity for these killings persists, reinforcing the tendency of law enforcement officials to substitute extrajudicial executions for investigation and criminal procedure.”⁹⁰ The result is that impunity for police killings has become institutionalized.⁹¹

95. As the Inter-American Commission stated in the 2005 decision on the Michael Gayle case, “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.”⁹² The IACHR further explained in the decision that “despite the high incidences of killings involving the security forces in Jamaica, these incidents rarely result in the prosecution or conviction of the officers involved. This in turn has led to the perception that the police are above the law.”⁹³

⁸⁹ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Philip Alston (Follow-Up to Country Recommendations), E/CN.4/2006/53/Add.2, March 8, 2006, ¶ 47, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/116/84/PDF/G0611684.pdf?OpenElement>.

⁹⁰ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Philip Alston (Follow-Up to Country Recommendations), E/CN.4/2006/53/Add.2, March 8, 2006, ¶ 75, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/116/84/PDF/G0611684.pdf?OpenElement>.

⁹¹ The Superintendent of the St. James Police Division recognized the high rate of impunity for criminal actions in the context of statements made after a 2006 police raid in Montego Bay, Jamaica. Jamaica Gleaner, “Guns and Drugs... the Montego Bay Link,” April 9, 2006, available at <http://www.jamaica-gleaner.com/gleaner/20060409/lead/lead4.html>.

⁹² IACHR, Report No. 92/05, Case 12.418 - Michael Gayle, Jamaica, OEA/Ser.L/V/II.124, October 24, 2005, available at: <http://cidh.org/annualrep/2005eng/Jamaica.12418eng.htm>.

⁹³ IACHR, Report No. 92/05, Case 12.418 - Michael Gayle, Jamaica, OEA/Ser.L/V/II.124 (2005), ¶ 93, available at: <http://cidh.org/annualrep/2005eng/Jamaica.12418eng.htm>.

96. Members of civil society continually express concern that despite the Jamaican Government's assurances to the contrary, "police investigations of police shootings failed to conform in many respects to international standards."⁹⁴

97. The culture of impunity in Jamaica is the result of several various problems during the investigation of police murders. As previously noted, partiality of the investigating institution, tampering with evidence, and severe lack of resources all negatively contribute to the high level of impunity for Jamaican police.

98. The procedural investigation of murders committed in Jamaica generally follows the pattern illustrated below. In Jamaica, when a murder occurs, a case undergoes a police investigation and a forensic analysis process.⁹⁵ At each stage of the investigation there are problems regarding impartiality, independence, and consistency that lead to the disservice of judicial due process in murder investigations.

D. Police investigations

99. The Jamaican Constabulary Force is the body responsible for investigating crimes committed by the public.⁹⁶ It is also the same body responsible for investigating crimes where its own members --police officers-- are involved in the wounding or death of a Jamaican citizen. The Bureau of Special Investigations (BSI) is the unit within the JCF responsible for investigating all police shootings that result in bodily harm or death and other allegations of abuse by police.

100. Prior to the establishment of the BSI, the Office of Professional Responsibility was charged with overseeing investigations of shootings by police officers. In 1999, the BSI was established with the intention of taking over all cases involving police shootings. Members of the BSI are police officers who are intended to work under the close supervision of the Director of Public Prosecutions.

101. The Inter-American Commission finds that there is a clear conflict of interest that hinders an independent investigation mechanism. Because the BSI is organized as a specialized unit of the JCF, this means that the police force essentially ends up investigating itself, an organizational arrangement that tends to instill a bias in investigators. On the basis of its observation in Jamaica and other reports, the IACHR also learned that this situation is further aggravated by the inability of BSI investigators to

⁹⁴ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 11 available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf; Amnesty International, "Killings and Violence by Police: How many more victims?", April 10, 2001, at 15, available at <http://www.amnesty.org/en/library/asset/AMR38/003/2001/en/d104e266-dc2d-11dd-9f41-2fdde0484b9c/amr380032001en.pdf>.

⁹⁵ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 11.

⁹⁶ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 12; "For Want of a Nail: Jamaicans for Justice (JFJ) Submission to the Jamaica Justice System Reform Initiative", Feb. 28, 2007, at 11.

control uncooperative officers who are not willing to give a statement or participate in the investigative procedure. Although they may be subject to minor internal disciplinary actions in theory, officers suffer no legal sanctions for their failure to cooperate.⁹⁷

102. In its observations, the State contends the following:

The Bureau of Special Investigations is comprised of professional members of the force who are expected to undertake their duties with the utmost impartiality. The BSI is headed by an Assistant Commissioner of Police, a very high ranking police officer. The fact that this high level officer reports to the Commissioner of Police does not imply that he is required to discharge his duty other than with the highest degree of professionalism and integrity. Further, the fact that the BSI is formally a part of the police structure does not automatically imply that it acts in a manner that undermines its own ability to carry out investigations against the police force. In a number of countries, including States in the Inter-American system, members of the police force conduct investigations into complaints of abuse by other members of the force. Jamaica is, therefore, not unique in this regard.

103. In addition to the Independent Commission of Investigations, there is also an Anti-Corruption Branch to investigate complaints against rogue police officers and to weed out corruption within the JCF. All of these investigative mechanisms assist in the fight against police impunity; however, the BSI is the main body for the investigation of police shootings.

104. The IACHR observed that the BSI operated with insufficient resources, and that although it was intended to have a professional staff of 60 investigators, it is staffed by 43 people, only 25 of whom are investigators.⁹⁸ The number of investigators compared to the volume of cases is vastly inadequate. Based on its interviews with authorities and members of civil society in Jamaica, the Inter-American Commission finds that the institution lacks the capacity to be present promptly at crime scenes, resulting in the tampering with or loss of vital evidence.⁹⁹

105. Following a police shooting, Jamaican procedure requires a process of administrative review to take place within 48 hours at the local police base of the shooting officer. A BSI investigator is required to be present at these hearings to assist with the objective of determining whether any rules have been broken and recommending

⁹⁷ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, , at 24-25, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf

⁹⁸ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights resolution 2003/53 (Mission to Jamaica), Doc. E/CN.4/2004/Add.2, Sep. 26, 2003, ¶ 28.

⁹⁹ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 12.

appropriate recourse such as training, supervision, or suspension of duties. However, the IACHR was informed that BSI officers frequently fail to attend these administrative reviews, primarily due to the long distances between BSI headquarters and the regions where incidents occur; and that regional police division commanders fail to comply with their duty to immediately report police shootings to the BSI.¹⁰⁰

106. The Inter-American Commission's observations and other reports indicate that personnel are overwhelmed and burdened by the great distances between BSI headquarters and most crime scenes, which means that investigators often do not view a crime scene until days after an incident occurs; sometimes as much as a month may pass until BSI investigators arrive at a crime scene.¹⁰¹ The Inter-American Commission is especially concerned that the delay in the arrival of BSI investigators can and does result in the tampering with and removal of evidence. There are reports of police officers removing or interfering with vital forensic and ballistics evidence after a shoot-out.¹⁰²

107. Local police agents are responsible for securing the scene and conducting the initial investigation prior to the arrival of the BSI investigators. The IACHR learned that because these local police agents are frequently the same officers involved in the shootings in question, they have ample time to tamper with evidence and distort the perception of the event at hand.¹⁰³

108. The Inter-American Commission received accounts indicating that after a killing, police officers allegedly move bodies, pick up shells, and generally disturb evidence before BSI investigators arrive to the scene; they often remove possibly incriminating evidence from the crime scene. Also, officers frequently claim to have recovered alleged weapons of the victims from the crime scene prior to BSI investigation, and have been known to plant weapons on their victims in an attempt to corroborate fabricated defense stories.¹⁰⁴

109. The BSI also suffers from the inability to obtain and analyze evidence properly. BSI investigators are often unable to adequately recover guns and bullets from crime scenes. The IACHR was informed that police officers rarely account for the actual

¹⁰⁰ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 24, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf.

¹⁰¹ Jamaican Justice System Reform Task Force Final Report, June 2007, at 14-15, available at http://moj.gov.jm/jamaicanjustice/pdf/ijsrtf_report_final.pdf.

¹⁰² Amnesty International, "Killings and Violence by Police: How many more victims?", April 10, 2001, at 16-17, available at <http://www.amnesty.org/en/library/asset/AMR38/003/2001/en/d104e266-dc2d-11dd-9f41-2fdde0484b9c/amr380032001en.pdf>.

¹⁰³ Amnesty International, "Killings and Violence by Police: How many more victims?", April 10, 2001, at 24, available at <http://www.amnesty.org/en/library/asset/AMR38/003/2001/en/d104e266-dc2d-11dd-9f41-2fdde0484b9c/amr380032001en.pdf>.

¹⁰⁴ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 12, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf.

weapons or bullets that were used during a police killing, in spite of JCF requirements to account for, catalogue, and provide investigators access to all weapons and bullets. Police stations are required to maintain records of firearms and the issuing of bullets; however, in practice, this rarely occurs and the logs often lack information.¹⁰⁵

110. Once a BSI investigator is assigned to a case, he or she must follow specific mandatory procedures. These include visiting the morgue, reviewing firearm and munitions records, interviewing the policemen involved, seizing of guns, interviewing witnesses, conducting forensics tests, attending the post-mortem, and establishing a chain of custody for evidence. The IACHR learned that in attempting to gather this information, BSI investigators are often hindered by the failure of police officers to cooperate with the investigating BSI agent, deficient resources, and the tampering of evidence.

111. Another major problem is that BSI investigators are inadequately trained to conduct investigations properly. The Inter-American Commission was informed that police investigators often fail to preserve and document evidence properly. Photographs and witness statements are frequently not taken, and where they are, they are not done in sufficient detail to be of utmost assistance to future court proceedings.

112. Finally, the IACHR is seriously concerned that the BSI's inability to complete investigations in an efficient and timely manner compromises its effectiveness as an investigative body. BSI investigations should be completed in six weeks; however, reports available to the IACHR indicate that most are not.¹⁰⁶ The information received by the Inter-American Commission also indicates that the BSI often fails to conclude investigations of police abuses, and when it does complete them, this often takes months or years. Between 1999 and 2007, the BSI failed to complete over 1400 investigations of police shootings, and enormous backlog that constitutes over 40 percent of the total number of recorded incidents.¹⁰⁷

113. The Jamaican State addressed the issues relating to the work of the BSI in the following terms:

Members of the Bureau of Special Investigation (BSI) arrive at the crime scene within a reasonable time of being informed that an offence has been committed. All members of the BSI work on a shift basis and reasonable resources are made available for their operations. In instances where a first responder (other than a member of the BSI)

¹⁰⁵ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 26, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf.

¹⁰⁶ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 12

¹⁰⁷ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 24, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf

attends the scene before the BSI, such first responder must protect the scene until the BSI and scene of crime officer arrives.

In addition, the BSI is mandated by the Force Policy and is present at every Administrative Review that is conducted within the Force.

It should also be noted that the BSI does not participate in the removal of evidence from a crime scene. The processing of a crime scene for evidence such as weapons is done by highly qualified persons from the forensic lab and the scenes of crime unit. The role of the BSI is now being performed by INDECOM.

114. The IACHR values the updated information presented by the Jamaican State in its observations to the draft version of this report. However, the Inter-American Commission observes an extremely large gap between the number of crimes attributed to members of the police, which include human rights violations as serious as extrajudicial executions. This situation of prevailing impunity is, in part, a consequence of structural problems, some of which have been acknowledged by the State in its response to the draft report on Jamaica. The IACHR will continue to engage the State with a view to working constructively toward more effective action against impunity for human rights violations.

E. Forensic examinations

115. According to the information received by the IACHR, following a police shooting, a forensic post-mortem examination is undertaken on the murder victim. This process includes performing an autopsy, and collecting, testing, and analyzing forensic evidence. The process of forensic examination and analysis is deeply flawed in Jamaica, greatly inhibiting the gathering of evidence during the BSI investigations. The State clarifies in its response that “It should be borne in mind that the evidence is first gathered and then the post-mortem examination is undertaken - it is not done directly after a shooting.”

116. The IACHR commends the recent attempts of the Government of Jamaica to bolster the police’s forensic investigation capabilities. As of April 2009, the JCF has utilized international consultants to conduct forensic training of police officers, certifying several officers through the United States-based International Crime Scene Investigators Association and upgrading senior crime officers to the internationally accredited classification of Forensic Crime Scene Investigators.¹⁰⁸ The Inter-American Commission commends the plans to have 300 such investigators in the next three years, to enable adequate forensic police investigations throughout the country. The State indicated in its response that it currently offers forensic training at both the undergraduate and graduate levels at the University of Technology of Jamaica and the University of the West Indies

¹⁰⁸ Jamaican Information Service “Gov’t Strengthening Police Forensic Skills to Increase Arrests,” April 23, 2009, quoting Assistant Commissioner of Police, available at: <http://www.iis.gov.jm/news/112-national-security/19318-security-gov-t-strengthening-police-forensic-skills-to-increase-arrests>.

(Mona Campus), respectively; it also reported on the plans to develop a Forensic Pathology Program in the country.

117. The National Forensic Laboratory and Jamaica's Pathology Unit are both under the direct control of the Ministry of National Security.¹⁰⁹ This creates similar questions of independence and impartiality when police shootings are involved. In this regard, the State clarified that the Forensic Lab remained with the Ministry of National Security when this Ministry was separated from the former Ministry of National Security and Justice, but it considers that "the placement of the Lab does not impact the independence and impartiality with which it operates." Additionally, the IACHR underscores that the lack of medical supervision or medical training raises concerns as to the quality of post-mortem examinations.

118. Based on its visit to the laboratory, the IACHR realized that it was severely understaffed and underfunded. Additional reports indicate that at that time there were only four forensic pathologists working in all of Jamaica, all of them foreign nationals.¹¹⁰ They are charged with the tasks of not only performing autopsies, but also visiting crime incident scenes, writing reports, and giving authoritative evidence in court. Their work is plagued by a lack of administrative support, substandard working conditions, and inadequate remuneration.

119. During its visit, the Inter-American Commission was informed that, in addition to the forensic pathologists, there are also two ballistic experts nationwide who analyze firearms and ammunition. Their offices are also severely understaffed and there is a considerable backlog of cases sent for ballistics analysis.

120. Forensic pathologists are severely overburdened. According to interviews conducted by the IACHR with officials knowledgeable about the situation, on average 10 to 12 autopsies are performed per day, but there is only one table available to conduct the procedures. Only three pathologists are assigned for Kingston, St. Andrew, St. Thomas and St. Catherine, and one more is assigned to Montego Bay. The official also informed the Inter-American Commission that it is necessary to triple or quadruple the office staff, and that at least 12 pathologists are necessary in order to perform the forensic work properly.

121. Information received from officials during the visit also indicates that the pathologists were not receiving all the information regarding the deaths before the *post mortem* exam. Due to the lack of staff, these exams are only performed on Tuesdays and Thursdays, while the other days of the week the pathologists must perform other tasks such as visiting crime scenes to assess the victim's circumstances of death. Like investigators, forensic pathologists often fail to visit crime scenes in a timely manner and sometimes do not visit them at all. This creates similar concerns about opportunities for

¹⁰⁹ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 27, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf.

¹¹⁰ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 13.

evidence tampering and removal in the interim period before the forensic pathologist arrives on the scene, resulting in a failure to preserve evidence for judicial examination.

122. With the high rate of murders committed in Jamaica, the caseload of forensic pathologists has become completely unmanageable. While the recommended average number of autopsies per pathologist is 250 to 300 per year¹¹¹, the IACHR learned that in this lab each of these professionals conducts approximately 800 autopsies per year, and sometimes as many as 11 per day. In comparison, the Medical Association of Jamaica recommended a minimum of 12-15 forensic pathologists to deal adequately with the workload at hand, each conducting 3 cases per week.¹¹² This lack of capacity results in flawed and incomplete reports, which are in turn less useful as proof in investigations and subsequent proceedings.

123. The observations of the IACHR during its visit to Jamaica confirm the findings of the Jamaican Justice Reform Task System Final Report:

Some delays in the criminal justice system can be attributed to the underdeveloped investigative capacity of the police force in Jamaica. It is quite clear that more investigators are needed to cope with the volume of serious cases. Similarly forensic capacities are under-resourced. Furthermore, policing is hampered by a history of police abuse of the rights of Jamaicans who come into conflict with the law. This history continues to influence the current state of affairs and must be taken into account in the reform process.¹¹³

124. The Inter-American Commission was informed that morgue attendants are often employed under the supervision of forensic pathologists to dissect bodies and remove organs, in an effort to supply additional personnel. Reports characterized this as problematic, because due to understaffing, the majority of dissections are performed by morgue attendants, and forensic pathologists rarely engage in the actual dissection of bodies.¹¹⁴ Because they are not adequately trained, the autopsies are often improperly performed and then cannot be fully utilized in judicial proceedings.

125. Moreover, the IACHR is also concerned with the failure to conduct autopsies in a timely manner. According to reports received by the Inter-American Commission, autopsies were sometimes left pending for up to two months, which resulted in the decomposition of bodies and the loss of potential evidence regarding the cause and circumstances of the death.¹¹⁵ As discussed above, the sheer magnitude of autopsies to be

¹¹¹ In addition, both the American Board of Pathology and the National Association of Medical Examiners state that the maximum number of autopsies a single medical examiner can perform per year and still be considered competent is 250-300.

¹¹² Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 14.

¹¹³ Jamaican Justice Reform Task System Final Report, June 2007, para. 556, p.222.

¹¹⁴ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 14.

¹¹⁵ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 14.

conducted results in incomplete work, further contributing to the lack of preservation of evidence. In this regard, the State informs that since 2011, autopsies for homicides are done within 24 to 48 hours. The Inter-American Commission welcomes this progress in strengthening the investigative capabilities of the Jamaican State, as a positive step in the fight against impunity for human rights violations.

126. There are often general failures to properly dissect bodies, fingerprint them, remove vital evidence such as bullets from the bodies, and collect and analyze evidence such as tissue and clothing samples. Accounts received during the visit, later confirmed by other sources, indicate that documentation of autopsies and official post-mortem reports often lack crucial standard observations.¹¹⁶

127. In addition to all of these concerns, the IACHR is quite troubled by the information regarding lack of adequate equipment and facilities of the Forensic Department. Government laboratories often lack basic X-ray machines to identify bullets lodged in corpses for extraction purposes, and ballistic machinery used in cases of weapon discharges has also become outdated and is no longer useful.¹¹⁷ While the Inter-American Commission was able to observe updated ballistics equipment, the inadequacy of human resources was also apparent. Additionally, the information received during the visit from governmental sources and from civil society indicates that autopsies performed in Jamaica do not meet minimum international standards, and in fact they lack the basic data required for this type of procedure.¹¹⁸

128. The Inter-American Commission notes that in cases where the available evidence indicates the possibility of an extrajudicial execution, the presence of independent observers at autopsies is an internationally accepted practice,¹¹⁹ but due to lack of resources in Jamaica such observers are often unavailable. When independent observers are present at autopsies, they have documented serious failures to meet international standards, including incompleteness of post-mortem reports and the discarding of vital evidence.¹²⁰

¹¹⁶ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 14; Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 17-19, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf.

¹¹⁷ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 14

¹¹⁸ Amnesty International, "Killings and Violence by Police: How many more victims?", April 10, 2001, at 57, available at: <http://www.amnesty.org/en/library/asset/AMR38/003/2001/en/d104e266-dc2d-11dd-9f41-2fdde0484b9c/amr380032001en.pdf>.

¹¹⁹ See, in this regard, United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991), available at: <http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html>.

¹²⁰ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 15.

129. Finally, the IACHR is concerned with the physical conditions of the facilities where forensic examinations and autopsies are conducted, especially considering that there currently is no public morgue in Jamaica. The Government Forensic Pathology Facility at the Spanish Town Hospital for storing bodies --which is not a morgue-- does not have refrigeration capabilities, and according to reports, bodies are often stored on top of each other, where de-refrigerated fluids drain from one body onto the other, contaminating evidence and making it difficult to draw conclusions as to the cause of death. Information available to the IACHR indicates that there are plans for the construction of the country's first public morgue to serve the parishes of Kingston, St. Andrew, St. Thomas, and St. Catherine; however, there was no budgetary provision for it during 2010 or 2011.¹²¹ Given the situation described above, the Inter-American Commission considers that completion of the morgue is urgently required.

130. Reports indicate that, notwithstanding the installation of the Independent Commission of Investigation in August 2010, the problems persist. In this regard, a recent news account indicates that INDECOM has stated that 95 per cent of incomplete shooting-related cases are awaiting the results of forensic testing. The Independent Commission, established in August 2010, has recommended that necessary steps be taken to improve the operations of the Government Forensic Lab, or that the Government of Jamaica give INDECOM budgetary allocations to use private local and overseas laboratories. The Independent Commission's first report to the Parliament of Jamaica presented on November 22, 2011 states that "cases have been delayed for up to two years awaiting forensic results (...) the Bureau of Special Investigations (BSI) has a total of 279 cases awaiting forensic analysis".¹²² In this respect, the Jamaican State notes that in approximately 90 per cent of these 279 cases, the forensic analysis was done and forensic results issued to the BSI.

131. The IACHR must emphasize the urgent need to address the general lack of resources and training that fails to preserve evidence for future judicial proceedings.

F. Director of public prosecutions

132. After the BSI completes its investigation of a case, it then goes to the Office of the Director of Public Prosecutions (DPP). The DPP decides either to prosecute the case immediately or submit it to the Coroner's Court to conduct an inquiry. The Coroner's Court is charged with holding an inquiry into the circumstances of the surrounding death, issuing a finding and making a recommendation to the DPP on whether to prosecute. After the Coroner's Court reaches a verdict, the case is returned to the DPP, who will then decide whether to go forward with prosecution. The DPP acts independently and may choose to prosecute or not regardless of the Coroner's Court recommendation.

¹²¹ Go-Jamaica, "Public morgue plans on stream", April 1, 2010, available at: http://go-jamaica.com/news/read_article.php?id=18172.

¹²² Jamaica Observer, "Forensic shame: Slow results from Gov't lab hurting INDECOM'S probes into police excesses", November 23, 2011, available at: http://www.jamaicaobserver.com/news/Slow-results-from-Gov-t-lab-hurting-INDECOM-S-probes-into-police-excesses_10238084.

133. Like the other institutions within the justice system in Jamaica, the DPP is affected by the reality of insufficient resources to perform its mandate. The Jamaican Justice System Reform Task Force stated in this regard:

The Office of the Director of Public Prosecutions, public prosecutors and Clerks of Court are under tremendous pressure within the Jamaican justice system today. On the whole, the prosecutorial arm is understaffed, under-resourced and not structured or managed in a manner that allows them to carry out their duties independently, effectively and efficiently.¹²³

134. The DPP has often been accused of institutional bias against prosecuting police, given the fact that very few cases are prosecuted against police for excessive use of lethal force or unlawful killings.¹²⁴ From 1999 to 2007, the BSI referred more than 1,500 police shootings cases to the DPP, yet the DPP chose to pursue criminal proceedings in less than ten percent. When the DPP does decide to pursue prosecution, it does not do so with the required effectiveness. Between 2006 and 2008, only 4.5 percent of officers under investigation for fatal shootings were charged by the DPP.¹²⁵

135. In its response to the draft version of this report, Jamaica indicated:

The DPP's decisions are already subject to scrutiny by way of judicial review - a system which has been used on several occasions in the past. Notwithstanding the independence of the DPP under Section 94 (6) of the Constitution, it is expressly provided that his discretion may be reviewed by virtue of Section 1(9) which states that no provision of the Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in exercising any functions shall be construed as precluding a Court from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with the Constitution or any other law.

136. The State also highlighted the March 19, 2009 decision of the Privy Council in the Case of Millicent Forbes v. The Attorney-General of Jamaica, in which it reiterated its position that decisions of the DPP are, in principle, subject to judicial review. Jamaica further submits that any additional systems of review would be complex and

¹²³ Jamaican Justice Reform Task System Final Report, June 2007, para. 97, p. 35.

¹²⁴ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 4, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf.

¹²⁵ 2009 AI Public Security Reforms Report, supra note 8, at 13. (Quoting JFG statistics that 1311 police officers are under investigation for their involvement in fatal shootings between 2006 and 2008, but only 59 were charged for murder and additional offenses).

generate “inordinate delays” and the additional problems of creating a body “intended to deliberate on judicial review cases already decided by the Privy Council, the country’s highest judicial body.”

137. With respect to the role of the DPP, the Jamaican State also observed the following:

It will be recalled that prosecution is only possible where there is sufficient evidence to charge a particular person with having committed a violation. A coroner’s jury, for instance, may be unable to state definitively who should be charged, based on the nature of the evidence before it. The question of criminal responsibility is a serious matter requiring proof of the highest standard. An investigation does not always result in the identification of a particular individual who can be held liable. The DPP may in some instances be unable to prosecute the matter if after careful examination of all the material available to him, including medical and forensic evidence, he determines that there is not sufficient evidence to charge anyone.

Under Section 94 of the Constitution, the DPP is empowered in any case in which he considers it desirable to institute and undertake criminal proceedings against any person. Whether sufficient evidence exists for anyone to be prosecuted must be left to the discretion of the DPP. A decision not to prosecute by the DPP does not amount to refusal or reluctance on frivolous grounds. On the contrary, it is an exercise of his independent discretion in the light of the evidence available.

138. The Inter-American Commission highlights the commitment shown in the past by the Direction of Public Prosecutions to clear the backlog of cases involving killings by police in and to increase in timely processing of police shooting cases. At the same time, the IACHR encourages the DPP to extend that level of efficiency to all cases and to treat all its petitioners with due respect and courtesy. The Inter-American Commission will continue to monitor the situation in order to determine if the measures adopted by the Jamaican State have resulted in the institutional strengthening of the DPP, so that it may perform its duties with the effectiveness required to address the serious problem of police impunity found in this report. This includes that the relevant authorities must assign the appropriate staff and resources in the budget, as was also identified by the JJSRTF report.

G. The coroner’s court

139. Even if a police killing case overcomes the BSI investigation process and is referred for prosecution by the DPP, the judicial system is characterized by structural flaws. The Final Report of the Jamaican Justice System Reform Task Force determined that there are systemic impediments to access justice in that country, which include, among others, “drastically inadequate financial and human resources”; insufficient user orientation; little public knowledge of the functioning of the justice system; complexity and inflexibility of

practices and procedures; insufficient strategic planning; and inadequate management tools and resources.¹²⁶

140. In addition, when police officers are charged in homicide cases, there are many factors that prevent a successful prosecution, including a witness protection program whose effectiveness is compromised by its dependence on the JCF; a general lack of respect and professionalism; and a pro-police bias.

141. The Coroner's Courts are required to investigate all unnatural deaths in Jamaica, including police shootings. The Coroner's Act of June 12, 1900 provides that any violent or unnatural death must be investigated by the corresponding Coroner in order to determine the cause of death and the existence of potential criminal liability. Following its examination, the Coroner's Court's verdict is transmitted to the DPP as a recommendation either to proceed with prosecution or not. As stated, the DPP may choose to take action on a case in contradiction to the recommendation to prosecute or not from the Coroner's Court.

142. Coroner's Courts are severely overwhelmed and their ability to handle cases in a timely and efficient manner is gravely hampered by a lack of adequate resources. The Coroner's Court recently reported an island-wide backlog of 4,000 cases and its future caseload is estimated to increase by about 350-400 cases per year.¹²⁷ This is the result of high numbers of homicides, a limited number of coroners, inadequate support staff, and inadequate technology.¹²⁸ This overburdening is exemplified by the fact that in all of Kingston, there is only one Coroner to investigate all inquests.¹²⁹ Additionally, there are no secretaries, clerks, or stenographers to assist at Coroner's Courts proceedings, often resulting in the Coroner him- or herself taking hand-written notes on testimony received and evidence considered by the jury.¹³⁰ The physical structures which house the Coroner's Courts are dilapidated and in a state of disrepair.¹³¹

143. The antiquated Coroner's Act of 1900 was amended in 2005 to modernize and speed up the Coroner's Courts. The act as amended set specific time limits: investigators were required to complete investigations within 21 days, post-mortem examinations to be conducted immediately after death, and court matters to commence within 30 days after receiving the results of the police investigation. However, the Inter-

¹²⁶ Jamaican Justice System Reform Task Force Final Report, June 2007, para. 38, p. 12.

¹²⁷ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 9.

¹²⁸ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 9.

¹²⁹ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights resolution 2003/53 (Mission to Jamaica), Doc. E/CN.4/2004/Add.2, September 26, 2003, ¶ 21.

¹³⁰ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007", March 20, 2008, at 31, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf.

¹³¹ Jamaicans for Justice, "The Bob Woolmer Legacy: Lessons for Jamaica", October 2008, at 11.

American Commission was informed that these provisions were rarely adhered to and that, to the contrary, there were rather long delays and a low turnover rate.

144. In order to address further deficiencies of the Coroner's Courts, the Parliament of Jamaica has passed the Act to Amend the Coroner's Act.¹³² This legislation is designed to improve the effectiveness of the Coroner's Court by creating a separate Office of the Special Coroner mandated to investigate any violent death suspected to be caused by a state agent. It is not yet known the effect this legislation will have on the backlog of cases facing the Coroner's Courts.

145. However, more steps must be taken to fully address the needs of the Courts. The IACHR was informed that --in addition to being overwhelmed and under-resourced-- Coroner's Courts frequently struggle to obtain evidence from the BSI and other investigative bodies. Because of the previously discussed difficulties of the BSI in obtaining evidence, conducting autopsies, and interviewing witnesses, Coroner's Juries are often unable to find that a police officer should be charged. Additionally, the Inter-American Commission learned that Coroner's Courts frequently struggle to secure civilian witness testimonies, and have an even greater challenge compelling police witnesses to show up and testify in police killing cases.¹³³

146. In its meetings with representatives of civil society in Jamaica, the Inter-American Commission received information indicating that jurors and judges are often perceived as manifesting a pro-police bias, a bias that may be explained by a fear of reprisals for ruling against a police officer accused of murder. In this regard, the JJSRTF found that "police abuse of civil rights, including illegal application of the state's power and authority over its citizens by some of its staff and the application of physical and verbal abuse, further contribute to waning public confidence and alienation from the justice system".¹³⁴ According to the information received by the IACHR, many judges are appointed after serving in the office of the DPP, giving them strong ties to prosecutors and affecting their impartiality.

H. Intimidation of witnesses

147. Persistent levels of deadly violence and impunity, in addition to the lack of accountability for police abuses, results in an environment of fear and intimidation among all sectors of the population, causing individuals to refrain from pursuing a legal remedy before the courts. The National Crime Victimization Survey released in January

¹³² Jamaican Parliament, The Act to Amend the Coroner's Act, available at: [http://www.moj.gov.jm/pdf/Coroners Amendment Bill as tabled in Parliament.pdf](http://www.moj.gov.jm/pdf/Coroners%20Amendment%20Bill%20as%20tabled%20in%20Parliament.pdf) (2008).

¹³³ Jamaicans for Justice, "For Want of a Nail", Submission to the Jamaican Justice System Reform Initiative, February 28, 2007, at 28, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/JM/JFJ_Jamicansforjustice_Annex7.pdf.

¹³⁴ Jamaican Justice System Reform Task Force Final Report, June 2007, para. 47, p. 14.

2009 revealed that less than one third of crimes are reported to the police.¹³⁵ This fear and the lack of confidence, in turn, have been identified by police and judicial authorities as key challenges in obtaining witness testimony for criminal trials. In its response, the Jamaican State “notes that there is a problem of witness intimidation by criminal elements in the society and is attempting to address it.”

148. One of the greatest impediments to an investigator’s ability to gather adequate evidence is the intimidation of witnesses who may be threatened, or even murdered.¹³⁶ According to reports, witnesses are routinely harassed and intimidated by police officers themselves. Interviews of victims’ relatives reveal a fear of retaliation for pursuing justice, and the victims often pointed to prior cases where witnesses or relatives had been killed under similar circumstances. Reports abound of threats and bribes from police officers towards family members of victims to prevent them from pursuing judicial remedies. The JJSRTF highlighted this problem when it indicated that the court system depends on cooperation from victims, witnesses, and jurors, and that “the level of public fear makes it very difficult to get this cooperation, which is essential for the proper functioning of the justice system”.¹³⁷ The problem of witness intimidation impedes the work of prosecutors and contributes to the dysfunction of the judiciary.

149. The JCF has acknowledged the problem of witness intimidation and in October 2008 issued a “Police Citizen’s Charter” which, among other things, encouraged vulnerable witnesses of crimes to come forward promising assistance in return.¹³⁸ The JCF also announced in June 2008 that it was creating a special witness protection unit to try to encourage witnesses to come forward.¹³⁹ The witness protection unit may suffer from a lack of independence because of its location as a part of the JCF.

150. In this regard, the State further notes the following:

The Ministry of National Security is the principal agency responsible for administering the Witness Protection Programme (WPP) in Jamaica. This is operated through the Justice Protection Unit (JPU), which, since 1997,

¹³⁵ Jamaican Ministry of National Security, National Crime Victimization Survey, released in January 2009, at 11, available at <http://www.oas.org/dsp/PDFs/Presentation%20Wortley.pdf>; Amnesty International, “Public Security Reforms and Human Rights in Jamaica”, AMR 38/001/2009, July 2009.

¹³⁶ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, “Killing Impunity: Fatal police shootings and extrajudicial executions in Jamaica 2005-2007”, March 20, 2008, at 112-13, available at: http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Documents/GWJFJ_Report.pdf.

¹³⁷ Jamaican Justice System Reform Task Force Final Report, June 2007, para. 42, p. 13.

¹³⁸ Jamaica Gleaner, “Police Citizens’ Charter”, October 5, 2008, available at: <http://www.jamaica-gleaner.com/gleaner/20081005/news/news5.html>; Jamaica Constabulary Force, “Jamaica Constabulary Force Citizens’ Charter”, available at: <http://www.mns.org.jm/JamaicaConstabularyForceCitizensCharter/tabid/412/Default.aspx>.

¹³⁹ Police Witness Unit, Jamaica Gleaner (Jun. 6, 2008), available at: <http://jamaica-gleaner.com/gleaner/20080606/lead/lead2.html>; Jamaican Ministry of National Security, Witness Protection Programme, available at: http://mns.org.jm/cms/?page_id=43.

is managed by Social Workers, thereby making the JPU's mandate fully independent of Jamaica Constabulary Force's. The Justice Protection Act, passed on 21 November, 2001, is the legislative tool that governs the Unit's operation.

To ensure coordination, the Justice Support Unit (JSU) was established in May 2009 within the Jamaica Constabulary Force and acts as the liaison between the Jamaica Constabulary Force, the JPU, and the Director of Public Prosecutions. This Unit operates out of the offices of the Criminal Investigation Branch (Investigation Division) and has the responsibility to coordinate all activities leading up to a prospective participant's admission to the Witness Protection Program. It is also responsible for ensuring that prior to witnesses accessing the program, all issues and concerns that they have are communicated to the JPU. The Justice Support Unit also has the responsibility to ensure that individuals who refuse to accept the offer of protection are given the necessary guidance and support.

151. Notwithstanding the foregoing, the IACHR must note that the JCF has also admitted publicly that the ineffectiveness of the program is attributable in some cases to the negligence of police officers themselves. According to a recent publication, the Commissioner of Police criticized members of the constabulary for their delayed handling of the Witness Protection Program. The police chief was quoted as saying that "the procedures and guidelines governing the operations of the Witness Protection Program, as set out in the previous publication, are not being properly followed" and that "this has resulted in delays in the processing of witnesses waiting to be placed on the program as well as to the program itself". At the same time, the Commissioner reminded divisional commanders that the divisions' crime officers must deliver applications for the program by hand to the Justice Support Unit of the Criminal Investigation Branch.

152. In this respect, the response of the Jamaican State indicates that "the JPU is not privy to matters relating to the effectiveness of that process" and that "applications received by the JPU are treated with the highest level of confidentiality and professionalism." The State adds that within 24 hours these files are assessed and processed, and that contact made with the applicants. Jamaica submits that "the JPU continues to be one of the most effective entities in fighting organized crime and criminal gangs" and that "since its inception in 1997, no client who has adhered to the guidelines of the Unit has been killed." Finally, the State affirms that "approximately 85 per cent of trial matters that protected witnesses participate in are disposed of with convictions and the witnesses remain safely on the program until they are fully reintegrated into society."

153. The Inter-American Commission welcomes the recognition by the Jamaican State of the serious problem of intimidation of witnesses, as well as its concrete efforts to address it. However, the IACHR continues to be concerned by the inability of Jamaican authorities to protect witnesses of police shootings or to preserve or encourage their testimony for trial. This intimidation and absence of protection for witnesses,

combined with inadequate investigations, leads to a failure to prosecute due to lack of evidence, despite clear and even overwhelming indicia of criminal responsibility.¹⁴⁰

I. The formation of an independent Commission

154. The IACHR has previously remarked upon the ineffectiveness of the former Police Public Complaints Authority as an independent oversight mechanism. In the Michael Gayle Case, the Inter-American Commission stated that the PPCA “suffers from weaknesses relating to its funding and authority”.¹⁴¹ The Inter-American Commission had also received information that the PPCA relied on the BSI investigation materials themselves in the very investigations they were supposedly overseeing.

155. Authorities in Jamaica were aware of the ineffectiveness of the Bureau of Special Investigation due to its lack of resources, independence, and access to evidence, and of the inability of the PPCA to serve as a successful oversight body to the BSI. In an effort to correct the deficiencies in these structures, the Government of Jamaica, led by Justice Minister and Attorney General Dorothy Lightbourne, proposed and implemented several legislative amendments to address the Jamaican Justice System. These amendments cover the following issues: the power to deny bail and detain people for extended periods of time; strengthening of police powers; and an increase on mandatory sentences.

156. The new legislation included the Independent Commission of Investigations Act, mentioned above, which created a new investigative body, INDECOM, to replace the failed PPCA. The Independent Commission took over from the Police Public Complaints Authority on August 16, 2010.¹⁴²

157. INDECOM has the power to investigate abuses by state police forces that include acts that “(a) resulted in the death of or injury to any person or was intended or likely to result in such death or injury; (b) involved sexual assault; (c) involved assault or battery by the member or official; (d) resulted in damage to property or the taking of money or of other property; or (e)... is in the opinion of the Commission of a grave or exceptional nature.”¹⁴³ The Act also provides for the establishment of regional offices of the proposed Independent Commission, detailed procedures for complaints by members of

¹⁴⁰ Jamaica Gleaner, “Police Witness Unit”, June 6, 2008, available at: <http://jamaica-gleaner.com/gleaner/20080606/lead/lead2.html>; Jamaican Ministry of National Security, Witness Protection Programme, available at: http://mns.org.jm/cms/?page_id=43.

¹⁴¹ IACHR, Report No. 92/05, Case 12.418 - Michael Gayle, Jamaica, OEA/Ser.L/V/II.124, October 24, 2005, ¶ 95, available at: <http://cidh.org/annualrep/2005eng/Jamaica.12418eng.htm>.

¹⁴² See website of the Independent Commission of Investigation, Government of Jamaica, at http://indec.com.gov.jm/about_us.htm

¹⁴³ Jamaican Parliament, “The Independent Commission of Investigations Act, 2009”, at Part III, 11-(1)(a)-(e), available at: http://www.japarliament.gov.jm/attachments/341_The%20Independent%20Commission%20of%20Investigation%20Act,%202010.pdf.

the public and procedures for investigating complaints, and obligated officers involved in incidents of abuse to submit necessary reports to the Commission.¹⁴⁴

158. INDECOM has been established under the auspices of Parliament, an improvement over the PPCA's former status as part of the Ministry of National Security.¹⁴⁵ Investigators are civilians who receive specialized training in forensics and ballistics and possess authority to take over a crime scene as well as to direct the initial investigation.¹⁴⁶ The Act establishes the unambiguous independence of this new body, stating that "... the Commission shall not be subject to the direction of control of any other person or authority."¹⁴⁷

159. INDECOM was given the authority to refer cases directly to the DPP, rather than having to go through the BSI.¹⁴⁸ However, there has been controversy about whether INDECOM has the authority to arrest persons after laying charges against them. In its first case charging a police officer in a fatal shooting, the Commissioner of INDECOM had the suspect arrested and brought before the court after what he deemed undue delay from the DPP.¹⁴⁹ The suspect was later released by the magistrate who claimed irregularities in how the officer was brought to court.¹⁵⁰ The Director of Public Prosecutions has claimed that the DPP must make a ruling in cases involving police personnel, as it is she who has the sole authority to initiate prosecutions.¹⁵¹ The position of the DPP that any charge against a police officer must first be approved by her compromises the authority and frustrates the purpose and independence of INDECOM.

160. With respect to this issue, the Jamaican State expresses that "these are questions concerning the interpretation of the statute establishing INDECOM" and that it is

¹⁴⁴ Jamaican Parliament, "The Independent Commission of Investigations Act, 2009", available at: http://www.japarliament.gov.jm/attachments/341_The%20Independent%20Commission%20of%20Investigation%20Act,%202010,.pdf, at Memorandum of Objects and Reasons.

¹⁴⁵ Jamaican Parliament, "The Independent Commission of Investigations Act, 2009", available at: http://www.japarliament.gov.jm/attachments/341_The%20Independent%20Commission%20of%20Investigation%20Act,%202010,.pdf, at Entitled Section.

¹⁴⁶ Jamaicans for Justice/IACHR Public Forum, Presentation by Justice Minister and Attorney General Senator Dorothy Lightbourne, December 2, 2008, at 11-12.

¹⁴⁷ Jamaican Parliament, "The Independent Commission of Investigations Act, 2009", available at: http://www.japarliament.gov.jm/attachments/341_The%20Independent%20Commission%20of%20Investigation%20Act,%202010,.pdf, at Part II, 5.-(1).

¹⁴⁸ Jamaicans for Justice/IACHR Public Forum, Presentation by Justice Minister and Attorney General Senator Dorothy Lightbourne, December 2, 2008, at 12.

¹⁴⁹ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic Report to the IACHR, *The State of Human Rights in Jamaica Since the State of Emergency 2010* at 16-17 (2011).

¹⁵⁰ Go-Jamaica, "Update: Controversy over Cop's Arrest in 'Mickey' Hill Shooting," February 25, 2011, available at: http://go-jamaica.com/news/read_article.php?id=26765.

¹⁵¹ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, "The State of Human Rights in Jamaica Since the State of Emergency 2010", Report to the IACHR, March 2011, at 16-17.

“a matter for judicial decision and is currently being examined.” Accordingly, Jamaica considers that it would not be appropriate for the State to comment on this matter until a decision is made by the Courts.

161. Further, INDECOM must rely on the BSI for evidence gathered in investigations. The deficiencies that plague the BSI have already been discussed above. The Commission hopes that the State of Jamaica addresses that the deficiencies in the BSI will be addressed to enable INDECOM to properly execute its mandate.

162. Though the creation of INDECOM is a very positive step towards ending police impunity for violence and achieving justice for victims and their families, the Inter-American Commission is specifically concerned with the possible international human rights implications of two main sections of the Act.

163. Firstly, the IACHR believes that the legislation takes positive steps to expand the scope of offenses from those involving death to other offenses such as injury, sexual assault, and damage to property. However, the Inter-American Commission expresses concern that the Act does not take a broad enough view of potentially harmful and abusive offenses by police officers.¹⁵² The Act does not provide for investigation where there is evidence of illegal detention and false imprisonment or where there are allegations of a failure to investigate by the police. The IACHR believes that as the sole investigative oversight body, the Independent Commission must include these additional offenses in its mandate of investigation in order to sufficiently combat all forms of police abuses. As to other offenses, the State observes that section 10(1)(c) and (e) of the Act “empower[s] INDECOM to investigate complaints involving assault, including threats of harm, reprisal or other intimidatory acts or battery.” The State further indicates that INDECOM may also investigate complaints that involve other conduct not specified in the Act but which constitute abuse of the rights of a citizen.

164. Secondly, the Inter-American Commission is concerned that the final reports of the Independent Commission, following a complete investigation, could be fully disclosed to the concerned officer or official. These final reports would contain information on witnesses and witness statements, reports about evidence and forensic investigations, and all other facets of the independent investigation.¹⁵³ Jamaica has informed the Commission that copies of reports completed by INDECOM are provided to the Director of Public Prosecutor, the Office of Special Coroner, the Police Service Commission, the Public Service Commission, and the Chief of Defense Staff where the incident involves misconduct by security forces.¹⁵⁴ It is unknown whether the reports could be easily accessed by the

¹⁵² Jamaican Parliament, “The Independent Commission of Investigations Act, 2009”, available at: http://www.japarliament.gov.jm/attachments/341_The%20Independent%20Commission%20of%20Investigation%20Act,%202010..pdf, at Part III, 11.-(1)(a)-(e).

¹⁵³ Jamaican Parliament, “The Independent Commission of Investigations Act, 2009”, available at: http://www.japarliament.gov.jm/attachments/341_The%20Independent%20Commission%20of%20Investigation%20Act,%202010..pdf, at Part III, 18.-(8).

¹⁵⁴ Government of Jamaica, Submission for Consideration on the IACHR Hearing on the Situation of Human Rights in Jamaica, 141st Regular Period of Sessions, Mar. 25, 2011.

police themselves, especially those under investigation. Given the context of witness intimidation and endangerment in Jamaica, this provision may not adequately provide witness protection from police officers, contributing to the pervasively existing fear in Jamaica of participating in judicial proceedings and seeking judicial remedies.

165. The Inter-American Commission commends the state of Jamaica for the positive developments contained this legislation, but it strongly urges the Jamaican State to consider the concerns indicated in continuing to implement this legislation.

166. In order to address the specific problems indicated above, the Inter-American Commission recommends that the Jamaican State adopt the following measures:

- a. End police impunity by aggressively pursuing cases at all levels in which state actors are alleged to have used excessive force.
- b. Expand, support, and continue to monitor legal aid services for those in the criminal justice system who cannot afford representation.
- c. Establish an independent body to investigate police misconduct to remove the potential for conflict of interest; and adequately staff, fund, and provide resources and equipment for such a body.
- d. Continue to train police officers in the rule of law and human rights.
- e. Employ adequate numbers of forensic investigators and ballistics experts and maintain support staff and equipment used for autopsies, forensic tests, and ballistics tests.
- f. Ensure the resources and working conditions necessary for forensic pathologists and other specialists, such as ballistic experts, to complete their work in a timely and effective way.
- g. Create a system to review DPP decisions not to prosecute in cases of police violence.
- h. Adequately staff and maintain the Coroner's Courts and work to end the practice of "professional jurors" to ensure that a pro-police bias does not impede justice.
- i. Strengthen the witness protection program to safeguard those who agree to participate in the criminal justice system, and ensure that police officers follow its guidelines strictly.
- j. Clarify the scope of the powers of the Independent Commission, and ensure that it can effectively pursue investigations and cases in the interests of justice and accountability.

CHAPTER IV
CONDITIONS IN PRISONS AND PENITENTIARIES
AND THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY

A. Arrest and detention practices

167. The Jamaican Constitution mandates that “[a]ny person arrested or detained... shall be brought without delay before a court.”¹⁵⁵ However, according to information received from members of civil society, the Jamaican Constabulary Force regularly engages in arbitrary arrests of persons who are held for long periods of time in police detention centers without seeing a judge. As analyzed in this chapter, Jamaican laws themselves, as well as pervasive practices, are in important respects incompatible with the international standards regarding the deprivation of liberty.

168. The Jamaican Constitution requires that all persons arrested or detained be “brought without delay before a court,” and “if not tried within a reasonable time to be released without prejudice and unconditionally.”¹⁵⁶ According to the information received by the IACHR from both official and civil society sources this is rarely the case in Jamaica.

169. In its observations, the Jamaican State considers that the considerations in the two previous paragraphs are broad and generalized statements that do not allow it to respond “appropriately and accurately.” Jamaica submits that “its laws are compatible with its Constitution which implements its international human rights obligations.”

170. The arrest and detention of suspects in Jamaica may take place in three types of situations: pursuant to a court-issued order or warrant; without a warrant; or without a warrant pursuant to the special procedures regarding cordons and curfews in Section 50(B) – 50(F) of the Constabulary Force Act.¹⁵⁷

171. Within the first category, an arrest warrant is issued by a court, a justice of the peace, or the police. Following the issuance of the warrant, an officer deprives a person of liberty pursuant to his or her power of arrest under court order of the Constabulary Force Act.¹⁵⁸ At that point, the law requires that the detainee be taken to a police station or lockup facility.¹⁵⁹

¹⁵⁵ Jamaican Constitution, Ch. 3, § 15(3)(b).

¹⁵⁶ Jamaican Constitution, Ch. 3, § 15(3)(b).

¹⁵⁷ Constabulary Force Act, December 19, 1935, § 50(b)-(f), available at: <http://www.moi.gov.jm/laws/statutes/The%20Constabulary%20Force%20Act.pdf>

¹⁵⁸ Constabulary Force Act, December 19, 1935, Part I, § 16, available at: <http://www.moi.gov.jm/laws/statutes/The%20Constabulary%20Force%20Act.pdf>.

¹⁵⁹ Constabulary Force Act, December 19, 1935, Part I, § 23(a) available at: <http://www.moi.gov.jm/laws/statutes/The%20Constabulary%20Force%20Act.pdf>.

172. Generally, a Resident Magistrate, Justice of the Peace, or a police officer shall decide whether to grant bail within 24 hours of when the suspect named in the warrant was arrested.¹⁶⁰ However, if the detainee has been charged with murder or treason, he or she must be brought before a Judge or Resident Magistrate within those 24 hours for a determination of bail.¹⁶¹ In practice, information available to the IACHR indicates that detainees charged with offenses are rarely issued a determination of eligibility for bail within 24 hours; instead, they are held for days or even weeks before they are brought before a resident magistrate, if at all.

173. The Inter-American Commission is concerned that Justices of the Peace, who are community leaders and not judicial officials, have the power to issue arrest warrants. Additionally, the Inter-American Commission is dismayed by accounts from authorities and civil society that indicate the widespread and discriminatory abuse by police officers of the power to arrest persons without warrant or probable cause. In this regard, the Minister of Justice of Jamaica was quoted in the media in September 2011 as affirming that ninety percent of the arrests of young men from inner-city communities on suspicion of criminality are arbitrary and illegal.¹⁶²

174. Jamaican law provides even fewer safeguards against abuse when the suspect is arrested not pursuant to a warrant and held without charge.¹⁶³ The Jamaican State indicated in its observations that “these persons are entitled to the protection of section 22 of the Bail Act which provides that where a person who is arrested or detained is not charged within 24 hours after such arrest or detention, he shall be brought forthwith before a Resident Magistrate or a Justice of the Peace who shall order that the person be released or make such other order as he thinks fit”.

175. In practice, most arrests that occur in Jamaica are warrantless, based on the broad powers contained in the Bail Act. These powers authorize the JCF to carry out “preemptive arrests” if there is a “suspicion that a breach of the peace will occur.”¹⁶⁴

176. Where a suspect is arrested by police without a warrant, he or she is taken to the police station or lockup.¹⁶⁵ Once charged, bail must be determined within 24

¹⁶⁰ Bail Act, available at: <http://www.moj.gov.jm/laws/statutes/The%20Bail%20Act.pdf>, § 3(1)-(2); Justices of the Peace Jurisdiction Act Part II § 43; Constabulary Force Act, Constabulary Force Act, December 19, 1935, Part I, § 23(b).

¹⁶¹ Bail Act, available at: <http://www.moj.gov.jm/laws/statutes/The%20Bail%20Act.pdf>, § 3(1), (4).

¹⁶² “Police abusing rights of poor, vulnerable: Chuck”, Jamaica Gleaner, September 25, 2011, available at: <http://jamaica-gleaner.com/gleaner/20110925/news/news1.html>. The news account refers to an address by Justice Minister Delroy Chuck to the Lay Magistrates Association of Jamaica, where he also said that Jamaica's justice system was not serving the people of the country properly, and that citizens should accept and address this issue. The Justice Minister was also quoted as saying “far too many of our young men are being picked up and locked away for no good reason, sometimes because of personal vendetta, personal spite or feelings.”

¹⁶³ Bail Act, available at: <http://www.moj.gov.jm/laws/statutes/The%20Bail%20Act.pdf>, § 3(1)-(2).

¹⁶⁴ Bail Act, available at: <http://www.moj.gov.jm/laws/statutes/The%20Bail%20Act.pdf>, § 13.

¹⁶⁵ Constabulary Force Act, December 19, 1935, , Part I, § 23(a), available at: <http://www.moj.gov.jm/laws/statutes/The%20Constabulary%20Force%20Act.pdf>.

hours by the resident magistrate in cases of murder, or by a police officer or justice of the peace. Jamaican law provides no procedure by which a competent court determines *ex officio* the legality of a warrantless arrest or detention by the JCF. The IACHR is very concerned by the lack of judicial review of this type of arrest in Jamaica.¹⁶⁶

177. If the detainee has not been charged within 24 hours of arrest, then he or she must be brought before a justice of the peace or a resident magistrate for a decision on how to proceed. If the detainee's case remains with the magistrate or the justice of the peace pending the execution of an "identification parade," the suspect remains in police custody during that time.¹⁶⁷ In practice, the Jamaican police regularly detain uncharged suspects for lengthy periods of time claiming they are awaiting the line-up or identification parade. Moreover, while the Resident Magistrate is expressly required by Jamaican law to monitor the actions of the police to ensure that these provisions are not abused by them,¹⁶⁸ the IACHR has been informed that this does not happen in practice.

178. A suspect may also be arrested without a warrant pursuant to the special procedures regarding cordons and curfews in Section 50(B) – 50(F) of the Constabulary Force Act.¹⁶⁹ Jamaican law provides for a unique scenario where officers can arrest suspects found within an area that has been cordoned off or are found on the streets after curfew.¹⁷⁰ Suspects arrested under one of these scenarios should be taken to a justice of the peace "forthwith" to determine the legality of their detention.¹⁷¹ However, as with other arrests governed by the undefined term "forthwith," detainees can sit in jail for as long as two months before going before a justice of the peace in such situations. If the legality of a detainee's arrest is affirmed by a justice of the peace, he or she must be brought before a resident magistrate within 24 hours to determine bail.¹⁷² This 24 hour rule is rarely respected; even when it is, the same procedure above applies, allowing a JCF

¹⁶⁶ In this regard, it should be noted that Article 7.5 of the American Convention guarantees the prompt judicial review of a person's detention, as a mechanism to avoid arbitrary and illegal deprivations of liberty. The Inter-American Court has said in this regard:

Immediate judicial control is a measure that seeks to avoid arbitrariness or unlawfulness of detentions, taking into account that under the rule of law the judge must ensure the detainee's rights, authorize precautionary or coercive measures, when strictly necessary, and in general make sure that the accused is treated in a manner consistent with the presumption of innocence.

I/A Court H. R., *Case of Tibi V. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 114.

¹⁶⁷ Bail Act, available at: <http://www.moi.gov.jm/laws/statutes/The%20Bail%20Act.pdf>, § 22.

¹⁶⁸ Judicature (Resident Magistrate) Act, § 63(A).

¹⁶⁹ Constabulary Force Act, December 19, 1935, § 50(b)-(f), available at: <http://www.moi.gov.jm/laws/statutes/The%20Constabulary%20Force%20Act.pdf>.

¹⁷⁰ Constabulary Force Act, December 19, 1935, § 50(B), available at: <http://www.moi.gov.jm/laws/statutes/The%20Constabulary%20Force%20Act.pdf>.

¹⁷¹ Justices of the Peace, available at: <http://www.moi.gov.jm/jp>.

¹⁷² Constabulary Force Act, December 19, 1935, § 50(F)(3), available at: <http://www.moi.gov.jm/laws/statutes/The%20Constabulary%20Force%20Act.pdf>.

officer to claim to a magistrate that continued detention is required pending an “identification parade.”¹⁷³

179. Because there are no public statistics on detentions in Jamaica, the government itself may not properly control or regulate it, and certainly civil society is not able to monitor detention practices to report abuses. There is no government ministry that keeps such statistics. According to information available to the IACHR, the JCF claims to have data on detentions, yet when it is requested to disclose this information by civil society organizations, the official response is that such data does not exist.

180. Additionally, the IACHR was informed that for most crimes, police officers and Justices of the Peace are authorized by law to determine bail. The Inter-American Commission is especially troubled that the police, who are responsible for the arrest and detention, are allowed to decide on bail, which is problematic given the absence of judicial review of warrantless arrests. The Justice of the Peace are not better suited to do the job, since they are community leaders chosen based on social rather than legal criteria.¹⁷⁴

181. The IACHR has also received information that the number of warrantless detentions without charge has increased since the state of emergency was declared in May 2010. Jamaicans for Justice reports that it has had a 41% increase in complaints received about persons detained without charge, with a significant number of those complaints regarding cases where the individual was held for more than one week and up to four weeks.¹⁷⁵ Further, the organization has received reports that Security Force Personnel are forcing young men into custody for a minimum of 72 hours to be “processed” without warrant, charge, or other legal basis.¹⁷⁶

182. A series of controversial “Crime Bills” passed by the Jamaican Parliament on July 9, 2010 expand the already broad restrictions on personal liberty. The 6 bills include several revisions to existing laws.¹⁷⁷ The Commission is especially concerned about 4 of these bills: Act to Amend the Parole Act; Act to Amend the Bail Act; Act to Make interim provision in relation to the grant of bail in specified circumstances; and Act to Make interim provision extending the powers of arrest and detention under sections 50B and 50F of the Constabulary Force Act.

¹⁷³ Constabulary Force Act, December 19, 1935, § 50(F)(3), available at: <http://www.moi.gov.jm/laws/statutes/The%20Constabulary%20Force%20Act.pdf>.

¹⁷⁴ Justices of the Peace, available at: <http://www.moi.gov.jm/jp>.

¹⁷⁵ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, Report to the IACHR, “The State of Human Rights in Jamaica Since the State of Emergency 2010”, March 2011, at 13, available at <http://www.jamaicansforjustice.org/docs/110406J2GF.pdf>.

¹⁷⁶ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, Report to the IACHR, “The State of Human Rights in Jamaica Since the State of Emergency 2010”, March 2011, at 14, available at <http://www.jamaicansforjustice.org/docs/110406J2GF.pdf>

¹⁷⁷ Presentation by the Independent Jamaican Council for Human Rights to the Inter-American Commission on Human Rights, December 1, 2008, at ¶ 15.

183. The Act to make interim provisions extending the powers of arrest and detention under sections 50B and 50F of the Constabulary Force Act¹⁷⁸ for a period of one year gives Jamaican Security Forces the power to arrest and detain suspects under certain circumstances.¹⁷⁹ The Act to Amend the CFA expands the length of time a suspect can remain in custody after a determination of reasonableness by the Justice of the Peace before being remanded to a Resident Magistrate.¹⁸⁰ The legislation passed in 2010 allows for a period of 72 hours instead of the prior 24-hour requisite.¹⁸¹ In cases of special police operations involving cordons or curfews, the legislation extends both the scope and the length of warrantless arrests and detentions. The State of Jamaica has stressed to the Inter-American Commission that this provision is only for one year, and that only policemen of certain rank can order an arrest. However, the interim provisions also give police authority to arrest persons outside of cordoned areas or areas under curfew, an increase of police powers over the previous section.

184. The Act to Make Interim Provision to Bail introduced more stringent conditions regarding the grant of bail to persons charged with certain offenses.¹⁸² In the report transmitted to the Jamaican State, the IACHR expressed concern that these provisions were contrary to the right to the presumption of innocence and to the right to personal liberty. In fact, this legislation placed the onus on the defendant, since it provided that the accused person be granted bail only if he or she “satisfies the Court that bail should be granted.” Under the Act, persons are entitled to be granted bail with regard to certain offenses for a period of sixty days, during which they can be brought before the court at specific intervals (seven days after being charged then every 14 days) for the court to determine if bail should be maintained.¹⁸³

¹⁷⁸ An Act to Make interim provision extending the powers of arrest and detention under sections 50B and 50F of the Constabulary Force Act, § 3(1).

¹⁷⁹ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, “Preliminary Analysis of Legislative Initiatives in Jamaica Affecting Human Rights”, November 19, 2008..

¹⁸⁰ Act to Amend the Constabulary Force Act, §3(3)(3)(a).

¹⁸¹ Act to Amend the Constabulary Force Act, §3(3)(3)(a); Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, “Preliminary Analysis of Legislative Initiatives in Jamaica Affecting Human Rights”, November 19, 2008, at 2.

¹⁸² Act to Make Interim Provision to Bail; Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, “Preliminary Analysis of Legislative Initiatives in Jamaica Affecting Human Rights”, November 19, 2008, at 3.

¹⁸³ Jamaicans for Justice further develops the problems it found after analyzing these legal provisions:

Most disturbing is how this law could be abused by law enforcement officers. It means that any policeman of whichever rank may charge any citizen with any of the scheduled offences under ‘An Act to Amend the Bail Act’ and deprive them of their liberty, with no possibility of judicial oversight for a period of 60 days.

JFJ has serious concerns with this legislation. This is effectively a 60-day sentence prior to a conviction and without any semblance of evidence being presented before a Court. We are also concerned that there have been no studies made available about the effectiveness of such a provision on the nation’s crime rate and what this will do to the occupancy levels in already overcrowded remand facilities.

185. With respect to the Bail (Interim Provisions for Specified Offences), the Jamaican State informs:

The Act was struck down as unconstitutional by a decision of the Full Court and has, therefore, not been re-enacted following the expiration of its sunset provision. Sections 3(4A), 3A, 3B, 10 (4) and the Second Schedule of the Bail Act as amended by the Bail (Amendment) Act were also struck down as unconstitutional and have, therefore, also not been re-enacted following the expiration of the Act's sunset provision. It, therefore, is no longer required that the defendant satisfy the court that bail should be granted as was required by virtue of the Bail (Amendment) Act 2010.

186. The IACHR welcomes the above mentioned judicial decision that declared unconstitutional the excessive requisites that placed the onus on the detainee to justify bail, and it will continue to monitor the effects of the other so-called "Crime Bills" as more information becomes available.

187. The IACHR observes that these "Crime Bills" could aggravate Jamaica's failure to comply with international obligations concerning the right to personal liberty, while not addressing the root causes of the high crime rate. The Jamaican Justice System Reform Task Force's Final Report released in June 2007 clearly stated that the primary root causes of the current high rate of crime in Jamaica are: high rates of youth unemployment, historically high levels of social inequality, and an ineffective criminal justice system.¹⁸⁴ These bills do not address the root causes; rather, they give more power to Jamaican police to detain persons without judicial review, while lessening the rights of individuals within a criminal justice system that is already falling below international standards for due process and judicial protection. While the Commission understands that Jamaica faces high crime and murder rates, it is extremely concerned about these recent laws and the effects they will have on those persons detained by a police force accused by civil society and international and national non-governmental organizations of grave human rights abuses.

B. Detention and prison conditions

188. Detention and prison conditions in Jamaica are generally very poor primarily due to overcrowding, poor sanitary conditions, and lack of sufficient medical

...continuation

Furthermore, it is highly unlikely, that there will be adequate redress made available to someone who is subsequently found innocent after having already been deprived of his or her liberty for an unwarranted 60 days.

Jamaicans for Justice, "Legislation Affecting Citizens' Rights", Newsletter, February 6, 2011, available at http://jamaicansforjustice.org/nmcms.php?snippets=news&p=news_details&id=2432.

¹⁸⁴ Jamaican Justice System Reform Task Force, Final Report, June 2007 at 7.

care.¹⁸⁵ While the Inter-American Commission commends measures taken by the Department of Correctional Services in 2006 to improve food service and medical care for inmates, conditions in prisons and lock-up facilities remain inhumane.

189. In Jamaica, the delegation visited prisons, police holding cells and other detention facilities. The IACHR was able to examine the conditions of St. Catherine Adult Correctional Center and found that positive measures were put in place to ensure an adequate level of hygiene, while the medical center, with five full-time doctors, six seasonal doctors and 40 beds, provides antiretroviral treatment to dozens of inmates with HIV, although some other drugs are not always readily available. Skills training programs are available to a fourth of the prison population, and they are able to train at the prison facilities, which include a bakery, a wood shop and a metal craft shop, among others. Nevertheless, many of the areas of this prison facility were overcrowded, with 1,240 inmates in a prison built for 850, and the delegation saw up to four people in an individual cell.¹⁸⁶

190. The problem of overcrowding is even more critical in the police holding cells, where those under arrest are locked up with persons in remand (preventive detention) 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 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, lived amongst garbage and human waste with absolutely no consideration for their dignity. In its initial observations, the IACHR called for urgent action to be taken to transfer the persons detained at Hunts Bay to a place that offers adequate standards of detention.

¹⁸⁵ Stephen Vasciannie, "Human Rights in Jamaica: International and Domestic Obligations," see <http://mord.mona.uwi.edu/biblio/view.asp?rid=5725&pid=1137&i=5>.

¹⁸⁶ A recently released report based on an August 2009 visit to the St. Catherine's Adult Correctional Center gives further details of the severe overcrowding in the facility:

In some cells [...] the overcrowding is such that hammocks are constructed and hung from the bars at the front of the cell and the grilled vent at the rear. The use of hammocks is against institution rules, but a necessity in the overcrowded cells so that the inmates have a space in which they can all lie down at once. The hammocks are clearly extremely dangerous. Firstly, in order to hang them tautly from the vent at the rear of the cell, they must be around 2.5 meters from the ground, meaning that the inmates must struggle to get into them, and run the risk of injury from falling onto the hard stone floor at night (or injuring their cellmates by falling upon them). Secondly, the hammocks themselves are often constructed on a makeshift basis, using whatever materials are available to the prisoners – one made using a tarpaulin sheet was fraying in several places and clearly about to break.

"Prison Conditions in Jamaica: A report based on James Robottom's visit in August 2009", The Death Penalty Project / The independent Jamaican Council for Human Rights, 2011, p. 26.

191. In its observations to the draft version of this report, Jamaica indicated the following:

The Government agrees that the condition of its Correctional Centres and police lockups is not ideal and that they are overcrowded. Every effort is being made to address this problem, despite financial constraints, including through the retrofitting of several police lockups island-wide and through plans for the construction of new Correctional Centres. The Government will continue to work to address the situation in prisons and lock-ups.

192. The Jamaican Justice Reform Task System issued the following considerations:

The most critical facilities issue is the deplorable condition of lock-ups, in police stations and in transport. The completely unacceptable conditions under which detainees and accused are kept have a deleterious effect on the spirit and morale of these individuals and their ability to give coherent instruction to counsel and to testify in court. In addition, these physical conditions make it extremely difficult, if not impossible, for client and attorneys to conduct their meetings, which are essential to due process and the right to legal representation. Attorneys, and in particular less experienced counsel, often have to struggle to gain access to their clients. It should be made clear that facilities for interviewing “in sight but not in hearing” be made available as a matter of course.¹⁸⁷

193. In this same regard, the United Nations Special Rapporteur on Torture found the following after visiting Jamaica:

The conditions in police stations can generally be regarded as inhuman and the treatment arbitrary. The Special Rapporteur found detainees held in cells that were overcrowded, filthy and infested with rats, cockroaches and lice. In addition, many of the cells were in complete darkness, and had poor ventilation and an unbearable stench. Detainees were forced to stay in their cells for most of the day, with very limited time allowed out of their cells. As a result, they were dependent on police officers to allow them to use the toilet in the corridors. When the officers refused, they were forced to urinate and defecate in plastic bags, bottles and plates, in front of their cellmates. The majority of police stations did not have mattresses; detainees were therefore forced to sleep on concrete beds and, when the cells were overcrowded, on the floor. Visits were infrequent and only for a few minutes. In many instances, detainees could not see their families.

¹⁸⁷ Jamaican Justice Reform Task System Final Report, June 2007, para. 97, p. 35..

When they were allowed, they had to speak through grills. Access to medical care also depended on the goodwill of the authorities.¹⁸⁸

194. Once arrested, pretrial detainees are generally held separately from convicted prisoners. However, detainees and prisoners alike are not free from physical abuse by prison guards.¹⁸⁹ According to reports, there are cases of police brutality amounting to torture that include “beatings, burns with hot irons, suffocation in water, and mock executions.”¹⁹⁰ It was also reported that during a four week period a Jamaican jail held an expatriate arrested for a drug offense, the expatriate witnessed one inmate in the cellblock killed while “endless more were beaten by either inmates or guards.”¹⁹¹ This same source also reported that prisoners would try to buy machetes, or would turn the end of their toothbrushes into knife-life spikes in an attempt to defend themselves against guards.¹⁹²

195. In response, the State indicated that mechanisms are available in Jamaica to address allegations of abuse, and mentions that independent investigations are conducted by the following institutions: the Inspectorate of the Department of Correctional Services; the Inspectorate of the Ministry of National Security; INDECOM; the Public Defender; and the Jamaica Constabulary Force. The State added that “disciplinary action is taken if recommended by the relevant investigations” and that “abuse of inmates/wards is not an accepted practice and every effort is made to monitor staff to ensure that they conduct their duties in a professional manner.”

196. The UN Special Rapporteur on Torture also stated the following about the situation of persons deprived of liberty in Jamaica:

With the exception of isolated instances, I have not found torture, in the classical sense of deliberately inflicting severe pain or suffering as a means of extracting a confession or information, to be a major problem in Jamaica. This may be partly due to the commendable rule that lawyers or Justices of the Peace must be present during interrogations, which acts as an important safeguard against torture. Severe pain and suffering

¹⁸⁸ United Nations Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum, Mission to Jamaica, A/HRC/16/52/Add.3, 11 October 2010, para. 38. The Commission notes that the State, in its observations to the draft report, indicated that it had previously questioned the fairness and accuracy of the Special Rapporteur. The State did not, however, provide any additional information with respect to the substance of those conclusions.

¹⁸⁹ Stephen Vasciannie, “Human Rights in Jamaica: International and Domestic Obligations,” available at <http://mord.mona.uwi.edu/biblio/view.asp?rid=5725&pid=1137&i=5>.

¹⁹⁰ Amnesty International, “Killings and Violence by Police: How many more victims?,” April 10, 2001, at 15, available at <http://www.amnesty.org/en/library/asset/AMR38/003/2001/en/d104e266-dc2d-11dd-9f41-2fdde0484b9c/amr380032001en.pdf>.

¹⁹¹ The Observer, “Four Weeks of Trauma,” December 19, 2004, available at <http://www.guardian.co.uk/world/2004/dec/19/jasonmccue.theobserver>.

¹⁹² The Observer, “Four Weeks of Trauma,” December 19, 2004, available at: <http://www.guardian.co.uk/world/2004/dec/19/jasonmccue.theobserver>.

applied for the purpose of punishment can, however, also amount to torture. I have 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.

The term “torture” is not part of the Jamaican lexicon. This may be due to the fact that there is no definition of torture in the criminal legislation. However, this absence of a legally defined crime of torture does not mean that it does not exist in practice. Thus, I strongly urge the Government of Jamaica to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to criminalize torture for preventive purposes.¹⁹³

197. Separate prisons are maintained in Jamaica for men and women; women’s prisons are generally not as overcrowded as men’s. Though children are supposed to be held separately from adults consistent with international standards, the Inter-American Commission learned that juveniles are often kept in adult jails.¹⁹⁴ Jamaican detention centers lack proper facilities to hold mentally ill persons.¹⁹⁵

C. Conditions of detention in death row

198. In 2010, Jamaica passed the An Act to Amend the Constitution of Jamaica to Provide for a Charter of Fundamental Rights and Freedoms. The Act stated the following in regards to the death penalty:

- (8) The execution of a sentence of death imposed after the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2010, on any person for an offence against the law of Jamaica, shall not be held to be inconsistent with, or in contravention of, this section by reason of
 - (a) the length of time which elapses between the date on which the sentence is imposed and the date on which the sentence is executed; or

¹⁹³ United Nations Press Release, UN Special Rapporteur presents preliminary findings on his mission to Jamaica, 19 February 2010.

¹⁹⁴ In this regard, the UN Special Rapporteur reported that “children in conflict with the law, those deemed uncontrollable and those in need of care and protection from the State were held together in detention facilities without distinction”. United Nations Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum, Mission to Jamaica, A/HRC/16/52/Add.3, October 11, 2010, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/169/26/PDF/G1016926.pdf?OpenElement>

¹⁹⁵ Jamaican Justice System Reform Task Force Final Report, June 2007, at 119, .available at: http://moj.gov.jm/jamaicanjustice/pdf/jisrtf_report_final.pdf.

- (b) the physical conditions or arrangements under which such person is detained pending the execution of the sentence by virtue of any law or practice in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2010.¹⁹⁶

199. The Commission is deeply concerned that this amendment contradicts Jamaica's current human rights obligations in regards to the death penalty and may result in future violations of human rights. In *Pratt & Morgan v. Attorney General of Jamaica*, the Judicial Committee of the Privy Council found that in Jamaica the execution of the death sentence after an unconscionable delay constitutes a violation of the right to humane treatment.¹⁹⁷ The Council stated specifically that if an execution takes place five years after sentencing, there are "strong grounds for believing that the delay is such as to constitute inhuman degrading punishment or other treatment."¹⁹⁸

200. The Inter-American Court has also been clear that the "death row phenomenon," the very practice this constitutional amendment sanctions, is a violation of fundamental rights. Citing findings from the European Court, the Inter-American Court stated that the "death row phenomenon" is a cruel, inhuman and degrading treatment, and is characterized by a prolonged period of detention while awaiting execution, during which prisoners sentenced to death suffer severe mental anxiety.¹⁹⁹ The conditions of extended detention before execution "compel the victims to live under circumstances that impinge on their physical and psychological integrity"²⁰⁰ and therefore constitute a violation of a state's obligations. The IACHR is extremely dismayed that Jamaica has chosen to amend its Constitution to allow for a practice that constitutes inhuman and degrading punishment and is thus a clear violation of Article 5 of the American Convention.

201. While at the St. Catherine Correctional Center, the Inter-American Commission delegation visited the Gibraltar building, which houses eight inmates on death row. The building is located near the center of the facility, isolated by fences and locked from the rest of the grounds. Each of the death row inmates has his own cell, with ragged mattresses on the floor, no electrical light or toilets inside them. The inmates use buckets when they are locked down, or the outside toilets which are covered with flies and cleaned infrequently. Death row is a very dark area, with a strong odor from the unsanitary

¹⁹⁶ An Act to Amend the Constitution of Jamaica to Provide for a Charter of Fundamental Rights and Freedoms and for Connected Matters, 2011, Chapter III 13(8)(a), (b).

¹⁹⁷ *Pratt & Morgan v. Attorney General for Jamaica*, [1994] 2 A.C. 1, 4 AI1 E.R. 769 (P.C. 1993).

¹⁹⁸ *Pratt & Morgan v. Attorney General for Jamaica*, [1994] 2 A.C. 1, 4 AI1 E.R. 769 (P.C. 1993).

¹⁹⁹ I/A Court H.R., *Case of Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 167.

²⁰⁰ I/A Court H.R., *Case of Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 169.

conditions and the extreme heat.²⁰¹ The IACHR finds that the conditions of detention for persons convicted to death in Jamaica are in serious violation of the right to humane treatment guaranteed by the American Convention, as well as the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, specifically Principle XII regarding accommodation, hygiene and clothing.

202. Further, the addition of the provision stating that a death penalty sentence may not be overturned no matter the conditions of a detention could lead to a further violation of Article 5. The Inter-American Court in *Hilaire, Constantine & Benjamin* held, in overturning the sentence of the death penalty for individuals in Trinidad & Tobago, that the conditions of lengthy detention in dire conditions on death row contravened Articles 5(1) and 5(2).²⁰² The Court found that detention in inhumane conditions for those awaiting the death sentence “only exacerbate[s] the intrinsic suffering that the alleged victims already endure due to the impending imposition of the death penalty.”²⁰³

203. The Inter-American Commission strongly encourages the State of Jamaica to bring its Constitution, laws and practices in line with its human rights obligations and ensure that no individual is deprived of his or her rights to liberty and humane conditions of detention under prevailing international law.

204. On the basis of its findings, the IACHR specifically recommends to the Jamaican State that it take measures in order to:

- a. Amend its Constitution in order to fulfill its obligations to individuals under the American Convention and international law standards with respect to the right to personal liberty.

²⁰¹ The previously referenced report on the St. Catherine’s Adult Correctional Center describes the building that houses death row:

The physical structure of each block is identical. Each can house a maximum of 26 inmates, with 13 cells facing inwards on either side of a central corridor. [...] The cells are separated by thick stone walls, and have grilled metal bars at the front. Each cell measures approximately 1.75 meters in width by 3.5 meters in length, with high ceilings around 3 meters from the ground. None of the cells have windows. The only ventilation in the cells comes from the barred entrances leading onto the corridor and barred, rectangular vents, around 10 centimeters high by meter wide, which are positioned above head height on each cell’s back wall. The latter provide the only access to fresh air in each cell, but they are also open to the elements, and inmates complain that during storms rain often blows in.

“Prison Conditions in Jamaica: A report based on James Robottom’s visit in August 2009”, The Death Penalty Project / The independent Jamaican Council for Human Rights, 2011, p. 21.

²⁰² I/A Court H.R., *Case of Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94.

²⁰³ I/A Court H.R., *Case of Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, paras. 84(m), (o).

- b. Comply with applicable international human rights standards and take the necessary measures to resolve the problem of overcrowding and unsanitary conditions in prisons and police holding cells.
- c. Inform detainees immediately after detention of their right to counsel and ensure adequate representation for all persons regardless of socioeconomic status.
- d. Comply with international and Constitutional law standards by ensuring that every instance of detention is given prompt judicial review by a judge, magistrate, or legal authority.
- e. Close loopholes in the law that allow police to issue their own warrants, set bail, and detain indefinitely under a claim of a pending "identification parade."
- f. Maintain statistics not just on individual detainees but on the numbers of detainees, charges, prosecutions, and releases country-wide.
- g. Improve the quantity and quality of food so as to ensure adequate nutrition for detainees and prisoners.
- h. Allocate more resources to the medical attention of inmates in order to guarantee that they have access to adequate medical, psychiatric and dental care, and to appropriate medication.
- i. Expand rehabilitation programs so that more inmates may have access to them.
- j. Expand educational and cultural activities available in prisons.
- k. Allow persons deprived of liberty to maintain direct and personal contact through regular visits with members of their family, partners and legal representatives.
- l. Maintain adequate and appropriate facilities for mentally ill persons and persons with disabilities.

CHAPTER V RIGHTS OF WOMEN

205. The human rights situation of Jamaican women, who constitute 50.72% of the population,²⁰⁴ was one of the issues to which the IACHR gave special attention during its visit. The Commission has received information from State institutions and from civil society organizations highlighting the advances and challenges the country faces related to gender equality issues. While Jamaica has made some progress in the adoption of legislative reforms aimed at improving its protection of the rights of women, discrimination and violence based on gender remain widespread, and women face significant barriers in obtaining access to judicial protection.

A. Discrimination

206. During its visit, the IACHR received information from both State and non-State actors highlighting forms of discrimination that women still suffer in Jamaica, and their most extreme manifestations. Despite a significant number of efforts from the State to address this problem, women continue to suffer different types of discrimination and violence, including domestic violence, sexual harassment, rape, and incest, among others. The Inter-American Commission will review its findings related to discrimination in this section, and immediately following will focus on the situation of violence against women.

207. In recent years, Jamaica has adopted a series of international legal standards related to discrimination and violence against women. The IACHR welcomed Jamaica's ratification on December 15, 2005 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the "Belém do Pará Convention".²⁰⁵ The Inter-American Commission acknowledged that through this initiative Jamaica demonstrated its commitment in favor of the protection of the rights of women and girls to live free from violence and discrimination, and to effectively access justice. Jamaica is also a party to the United Nations Convention for the Elimination of All Forms of Discrimination against Women.²⁰⁶

208. Jamaica has also undertaken steps to strengthen its normative framework related to discrimination against women. The Jamaican Constitution broadly prohibits discrimination on the basis of sex, stating that freedoms of individuals are granted regardless of "race, place of origin, political opinions, colour, creed or sex."²⁰⁷ The Inter-

²⁰⁴ Statistical Institute of Jamaica, Official Population Census 2008, Jamaica. Population by sex between 2004 and 2008. available at <http://statinja.gov.im/population.aspx>.

²⁰⁵ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention of Belém do Pará", Ratified December 15, 2005; See IACHR Press Release 1/06 "The IACHR and its Rapporteurship on the Rights of Women welcome Jamaica's ratification of the Convention of Belem do Pará, January 5, 2006, available at: <http://www.cidh.org/comunicados/english/2006/1.06eng.htm>

²⁰⁶ United Nations Convention for the Elimination of All Forms of Discrimination against Women, Ratified by Jamaica on October 19, 1984.

²⁰⁷ Jamaican Constitution. Order in Council (1962), Chapter 3, section 13.

American Commission also enthusiastically welcomes the news that a provision outlawing discrimination on the basis of sex was included in the Bill for a Charter of Fundamental Rights and Freedoms, and looks forward to receiving updates from the State and civil society on the implementation of that non-discrimination amendment.²⁰⁸

209. Other noteworthy legal reforms have been adopted in the realms of violence, family law, and the economic, social and cultural rights of women. In 2004 the State of Jamaica enacted both the Domestic Violence Act and the Spousal Property Act which make it easier for women to escape violent relationships. The Spousal Property Act mandates that family homes are the property not only of the registered owner, but the unregistered (usually female) spouse as well. The Act also requires the consent of the non-acting spouse for completion of any property-based transactions.²⁰⁹ The Domestic Violence Act was recently amended to allow battered women in non-marital relationships to seek redress under this law. In 2005, the Maintenance Act was amended to confer equal rights and obligations on spouses with respect to the support of each other and their children.

210. Specifically, the IACHR was informed in 2008 that the government was undertaking a gender analysis of 42 existing laws to identify further amendments that may be needed.²¹⁰ In 2011, Jamaica informed the Committee of the Convention for the Elimination of Discrimination Against Women (CEDAW) that significant efforts have been made in the past few years to “close legislative gaps and enact laws” to bring the country’s legal framework fully into compliance with the provisions of the Convention.²¹¹ In general, Jamaica informed the CEDAW Committee this year that:

The Government has put in place a gender equality framework in its policies, programs, and plans, in keeping with the international legal requirements, international human rights obligations, commitments and principles. Some of these include the acceleration of legal and constitutional reform to protect against sex discrimination; sexual harassment; law & policy through legal reform to review and amend legislation geared towards the elimination of all forms of violence against women and girls. There is ongoing legislative reform relating to women to ensure that women receive adequate redress under the law as well as

²⁰⁸ An Act to Amend the Constitution of Jamaica to Provide for a Charter of Fundamental Rights and Freedoms and for Connected Matters (Jamaica 2011) Chapter III 13(3)(i),(i).

²⁰⁹ Amnesty International, “Sexual violence against women and girls in Jamaica: ‘Just a Little Sex,’” June 2006, p. 16.

²¹⁰ Inter-American Commission of Women, “National Report: Jamaica”, Prepared by the Bureau of Women’s Affairs for presentation to the 34th Assembly of Delegates, 27 October 2008.

²¹¹ Committee on the Elimination of Discrimination against Women, “Combined sixth and seventh periodic report of States Parties: Jamaica”, January 7, 2011, para. 67.

the introduction of new legislation to provide protection and remedies for women and girls.²¹²

211. Moreover, although the State has adopted legislative reforms regarding domestic violence and spousal property, it has yet to extend such reforms to provisions concerning rape and other sexual crimes. An investigation by Amnesty International found that “shortcomings in national legislation do not deal adequately with marital rape, incest or sexual harassment, thereby encouraging impunity and leaving women without the protection of the law.”²¹³ The State submitted updated information in its response, indicating that the Sexual Offences Act passed in 2009 criminalizes marital rape. The Inter-American Commission welcomes this positive legislative development; however, it must stress that according to reports, the Government has yet to take decisive action against these practices, which perpetuates the scheme of discrimination against women.²¹⁴ In this regard, the IACHR notes the introduction of new bills, such as the Sexual Offences Bill, proposed to cover all forms of sexual offenses; and the Sexual Offences Act, intended to amend the current provisions related to the prosecution of rape and other sexual offenses.²¹⁵

212. Along with these legal reform efforts, organizations working to advance the rights of women reported that the government has been open to dialogue about their concerns and has consulted them in relation to draft legislation brought before Parliament concerning the rights of women. The Bureau of Women’s Affairs as well has applied the *Model Legislation on Violence against Women* developed by the Commonwealth Secretariat to design and amend the existing legislation pertaining to this issue, in harmony with current human rights standards.

213. While the Jamaican government has taken positive steps towards respecting and protecting the rights of women, the Inter-American Commission observes that the path to gender equality is still affected by key obstacles in the country.

214. For example, the Commission has received key information indicating that poverty is a key factor in the discrimination that women suffer in Jamaica. Both State and non-State actors agreed that poverty has a disproportionate impact on women. Women are burdened by greater rates of unemployment and lower salaries than men, resulting in serious consequences for the many single mothers, aunts, and grandmothers raising children. An analysis of unemployment rates in the aftermath of trade liberalization

²¹² Committee on the Elimination of Discrimination against Women, “Combined sixth and seventh periodic report of States Parties: Jamaica”, January 7, 2011, para. 115.

²¹³ Amnesty International, “Sexual violence against women and girls in Jamaica: ‘Just a Little Sex,’” June 2006.

²¹⁴ Amnesty International, “Sexual violence against women and girls in Jamaica: ‘Just a Little Sex,’” June 2006.

²¹⁵ Committee on the Elimination of Discrimination against Women, “Combined sixth and seventh periodic report of States Parties: Jamaica”, January 7, 2011, para. 67 and 69.

has revealed that new trade policies may have increased male jobs by about 45,000 over the past decade, while female jobs may have decreased by 12,000 or more.²¹⁶

215. Women in Jamaica have the right to participate equally in the political process; notwithstanding, they are severely underrepresented. There are some positive developments, such as the case of Portia Simpson-Miller, who served from 30 March 2006 to 11 September 2007 as Jamaica's first female Prime Minister, and was again elected to that post on December 30, 2011. However, this stands in contrast with the underrepresentation of women in government and the higher echelon of political parties. In 2007, there were only eight women elected to the 60-seat House of Representatives, only three women appointed to the 21-seat Senate, and only two women serving amongst the 18 cabinet ministers. In recent years, although larger numbers of women are competing to be political representatives, their successes are limited.²¹⁷ In 2010, only 13% of Parliamentarians were women.²¹⁸ During 2011, the United Nations Human Rights Committee recommended to the State of Jamaica that it strengthen its efforts to increase the participation of women in decision-making positions in the public and private sectors through the implementation of "new practical initiatives", which should include the adoption of temporary special measures.²¹⁹

B. Violence

216. The IACHR has also received information indicating that violence against women is an alarming problem in Jamaica. Impunity has prevailed with respect to most of these acts, which are then reproduced in a context of social tolerance. The Inter-American Commission reminds the State of Jamaica of its obligation to act with the due diligence necessary to address the prevailing violence against women in the country, and to organize its state structure to sanction these crimes adequately and to address the discrimination that fuels them. During its visit and through the implementation of its human rights monitoring mechanisms, the IACHR received information about major forms of violence that affect women throughout the country, including domestic violence and rape.

217. In regards to the problem of violence against women in Jamaica, the United Nations Development Program has stated that "the culture of aggressive masculinity makes women, children and the elderly among the most vulnerable; violence

²¹⁶ Associations of Women's Organizations in Jamaica (AWOJA), Jamaica and CEDAW: The NGO Perspective, August 2006, at 21, available at <http://www.iwraw-ap.org/resources/pdf/Jamaica%20NGO%20SR.pdf>.

²¹⁷ Committee on the Elimination of Discrimination against Women, "Combined sixth and seventh periodic report of States Parties: Jamaica", January 7, 2011, at 16.

²¹⁸ Donna Hussey-Whyte, "Too Few Women in Parliament, Says Gender Specialist," Jamaica Observer, Nov. 3, 2010. Available at: http://www.jamaicaobserver.com/news/Too-few-women-in-Parliament--says-gender-specialist_8105304.

²¹⁹ United Nations Human Rights Committee, "Concluding Observations of the Human Rights Committee: Jamaica", 103rd Session, Geneva, October 17-November 4, 2011.

against women includes high rates of rape and assault”.²²⁰ A high public official from the Ministry of Justice has also been quoted as saying that “women are more vulnerable to become victims of violence, as the seven groups which fall under the VSU [Victim Support Unit] are rape, carnal abuse, incest, attempted rape, indecent assault, domestic violence and murder, (...) it is for this reason why females continue to suffer.”²²¹

218. While violence against women is reported to be widespread, it rarely results in prosecution. In 2010 Amnesty International reported that “a study on the relationship between adolescent pregnancy and sexual violence carried out by health care researchers showed that 49 per cent of the 750 girls aged between 15 and 17 surveyed had experienced sexual coercion or violence”.²²² Official statistics for the 2009-2010 period indicated that 685 rapes were reported, but only 263 of them were “cleared up.”²²³ Sexual violence often goes unreported, which means the number of incidents is higher than what is recorded.²²⁴

219. The Bureau of Women’s Affairs in Jamaica acknowledged in 2008 that women and girls in the country are victims of gender-based violence, including “rape, carnal abuse, buggery, sexual harassment, trafficking in persons, domestic violence and sexual violence.”²²⁵ It has indicated that girls and boys are becoming increasingly vulnerable to sexual violence and are more likely to become abusers themselves due to contributing factors such as poor parenting, child abuse and substandard living conditions.²²⁶

²²⁰ United Nations Development Program, The Jamaica Violence Prevention, Peace and Sustainable Development (JVPPSD) Programme 2008-2010, available at <http://www.jm.undp.org/jvppsd-20082010>.

²²¹ “Domestic violence statistics alarming”, Jamaica Gleaner, July 21, 2008, available at: <http://jamaica-gleaner.com/gleaner/20080721/lead/lead6.html>.

²²² Amnesty International, 2010 Report on Human Rights in Jamaica, Section on Violence against women and girls.

²²³ Jamaica Constabulary Force, Crime Statistics, 2009-2010 Annual Report, available at <http://www.jcf.gov.jm/sites/default/files/ANNUAL%20REPORT%202009%20TO%202010.pdf>.

²²⁴ The Assistant Commissioner of Police of Jamaica was quoted recently on the matter of police handling of domestic violence cases:

A lot of police and persons wouldn't know that on average, a woman is likely to be abused and go through the help-seeking process about 35 times before she finally makes up her mind to get treatment.

That is the average time between the woman going to the police and leaving the man. So when the police or social worker keep seeing the same persons come to report that they are being beaten, and yet not willing to take any action, which from their perspective seems logical, the response is likely to be inappropriate.

“Cops get abuse sensitivity training”, Jamaica Observer, January 11, 2011, available at: http://www.jamaicaobserver.com/news/Cops-get-domestic-abuse-sensitivity-training_8216800#ixzz1frckmfXU

²²⁵ Inter-American Commission of Women, “National Report: Jamaica”, Prepared by the Bureau of Women’s Affairs for presentation to the 34th Assembly of Delegates, 27 October 2008.

²²⁶ Inter-American Commission of Women, “National Report: Jamaica”, Prepared by the Bureau of Women’s Affairs for presentation to the 34th Assembly of Delegates, 27 October 2008.

220. The Inter-American Commission has also received information indicating that domestic violence is a problem of great breadth and severity in the country. For example, information received by the IACHR indicates that between 2005 and 2008 the 13 offices of the Victim Support Unit (VSU) of Jamaica received 22,739 cases of domestic violence, of which 13,979 were women and girls.²²⁷ In the Jamaican Justice System Reform Task Force Final Report, the Task Force discusses the problem of domestic violence in Jamaica. The National Security Strategy describes the problem in the following terms:

Domestic violence is one of the more pervasive and common forms of violence plaguing the society. It contributes to the overall pattern of crime and violence due to its debilitating effects on the social fabric and its role in socializing the youths to violence as a means of dispute resolution. Women and children are disproportionately at risk from domestic violence.²²⁸

221. However, the gravity of the problem of domestic violence is not matched with an equivalent State response. Domestic violence is not always viewed as a crime, in part due to the perceived lower social status of females in Jamaica.²²⁹ Additionally, women's organizations claim that the way violence is presented in the media promotes it as "normal" and/or "justified" and shows violence as appealing to youth.²³⁰ Police officers are averse to enforcing laws related to domestic violence, which results in the victims' mistrust of the law enforcement system.

222. In this regard, Jamaica emphasized in its observations to the draft report that it "continues to be committed to women's empowerment" and that "reducing violence against women and girls, therefore, remains a priority for the Government." The State mentions that the Bureau of Women's Affairs (BWA) "plays an important role by providing training to public and private sector workers on a range of issues regarding violence against women," complemented by the work of several non-governmental organizations. Jamaica adds that "technical assistance is provided by bilateral and multilateral partners for the implementation of projects aimed at addressing gender-based violence. With funding support from the UNIFEM Trust Fund Violence against Women Reduction Project (2007-2009), for example, workshops and discussions were held with some Resident Magistrates on the implementation of international conventions and agreements relating to violence against women and girls."

²²⁷ "Domestic violence statistics alarming", Jamaica Gleaner, July 21, 2008, available at: <http://jamaica-gleaner.com/gleaner/20080721/lead/lead6.html>.

²²⁸ Jamaican Justice System Reform Task Force Final Report, June 2007, at 117, available at http://moj.gov.jm/jamaicanjustice/pdf/jisrtf_report_final.pdf.

²²⁹ United Nations Common Country Assessment for Jamaica 2006-2010, p. 9. Available at: <http://www.im.undp.org/files/doc/2006-2010%20UN%20CCA.pdf>.

²³⁰ Inter-American Commission of Women, "National Report: Jamaica", Prepared by the Bureau of Women's Affairs for presentation to the 34th Assembly of Delegates, 27 October 2008.

223. The State goes on to list various programs and initiatives aimed at addressing discriminatory attitudes and traditional stereotypes in the country, which include Schools' Education Program, Community-based Program, Justice System Workshops, Faith-based organizations, Legislative Review public awareness sessions and special activities in observance of events such as International Women's Day and the International Day for the Elimination of Violence Against Women. Jamaica refers additionally to efforts made to ensure an understanding of the role of the media in combating such stereotypes and attitudes is understood, to which end it sponsors ongoing discussions, video presentations, and partnerships with other government agencies and civil society groups. Other activities mentioned by the State include workshops and training sessions, as well as the preparation of a National Policy for Gender Equality and a National Plan of Action on Gender Based Violence. Jamaican authorities have conducted training sessions for members of the judiciary and the DPP, aimed at achieving more effective redress for women and girls who are victims of violence, especially sexual violence and domestic abuse; also, a number of training sessions were held to discuss the enhancement of the role of men in the elimination of violence against women.

224. The IACHR reminds the Jamaican State of the recommendations issued by several United Nations bodies to address adequately the problems of discrimination and violence against women. The United Nations Human Rights Committee recommended to the State of Jamaica in 2011 "to adopt a comprehensive and approach to preventing and addressing gender discrimination and sexual harassment in all its forms and manifestations."²³¹ In this realm, it recommended that the State improve its research and data collection efforts to establish the magnitude of the problem, its causes and consequences; and the adoption of comprehensive legislation that clearly prohibits discrimination and sexual harassment in the employment setting.²³² The Human Rights Committee also recommended to the State this year to strengthen its efforts to combat gender-based violence and to ensure that cases are dealt within "an appropriate and systematic manner by, inter alia, investigating, prosecuting and punishing the perpetrators."²³³ It particularly encouraged an increase in the training of the staff in its Victim Support Unit and the Police on violence against women, including sexual abuse and domestic violence, and the provision of adequate shelters for victims of gender-based violence.

225. The CEDAW Committee has also urged the State of Jamaica to give priority attention to the design and implementation of a comprehensive strategy to combat and eradicate violence against women "to prevent violence, punish offenders and provide services for victims."²³⁴ It has recommended to the State to adopt a number of

²³¹ United Nations, Human Rights Committee, "Concluding Observations of the Human Rights Committee: Jamaica", 103rd Session, Geneva, October 17-November 4, 2011, para. 4.

²³² United Nations, Human Rights Committee, "Concluding Observations of the Human Rights Committee: Jamaica", 103rd Session, Geneva, October 17-November 4, 2011, para. 18.

²³³ United Nations, Human Rights Committee, "Concluding Observations of the Human Rights Committee: Jamaica", 103rd Session, Geneva, October 17-November 4, 2011, para. 19.

²³⁴ Committee on the Elimination of Discrimination against Women, Concluding Comments on Jamaica, CEDAW/C/JAM/CO/5, 25 August 2006, para. 16.

actions, including the collection in a systemic fashion of data disaggregated by sex, and the design of a comprehensive strategy, including clear goals and timetables, to modify and eliminate negative cultural practices and stereotypes that discriminate against women.²³⁵

226. The State of Jamaica informed the CEDAW Committee during 2011 of a number of measures that it is undertaking to address forms of discrimination and violence against women that prevail in the country.²³⁶ The State reported that it is offering priority attention to the design of a strategy to combat and eradicate violence against women; it is conducting awareness-raising sessions to train the judiciary, law enforcement officers, prosecutors, teachers, health care providers, and the media; it is working towards the establishment of an monitoring mechanism to regularly assess the impact and effectiveness of law enforcement and programs aimed at preventing and providing redress to victims of violence; among others.²³⁷ The information collected however indicates that there is still a notable gap between the legislation adopted, and its practical and adequate implementation.

227. With respect to activities in the framework of United Nations agencies, the State mentions the following:

Under the “*Strengthening State Accountability and Community Action to End Gender-based Violence*” project funded by UNWomen, formerly UNIFEM, a document to protect women entitled “*Complaints & Response Protocol on Gender-Based Violence for the Office of the Public Defender*,” was developed based on consultations with the Office of the Public Defender, Jamaica Constabulary Force and non-governmental organization concerned about human rights. In an effort to increase the skills of the police, two (2) members of the Centre for the Investigation of Sexual Offence and Child Abuse (CISOCA participated in a Police Internship Programme on Management of Domestic Violence and Sexual Offence Cases: An approach to preventing and investigating sexual and gender-based crimes held in Canada and Rwanda respectively.

Jamaica continues to be engaged in the UN Secretary General’s UNiTE to End Violence Against Women Campaign. This campaign included a series of Public Service Announcements (PSAs) by sixteen (16) local artistes who advocate for an end to violence against women. These continue to be aired on local television and radio stations. Other activities include a series of concerts and discussions with gospel artistes, youths and adults from various churches and communities.

²³⁵ Committee on the Elimination of Discrimination against Women, Concluding Comments on Jamaica, CEDAW/C/JAM/CO/5, 25 August 2006, paras. 12 and 14.

²³⁶ Committee on the Elimination of Discrimination against Women, Combined sixth and seventh periodic report of States Parties: Jamaica, January 7, 2011.

²³⁷ Committee on the Elimination of Discrimination against Women, Combined sixth and seventh periodic report of States Parties: Jamaica, January 7, 2011, paras. 46-48.

The Way Out Project (2011)-Women's Economic and Political Empowerment is another important initiative of the Government of Jamaica and UNWomen and is geared towards the empowerment of women and gender mainstreaming. It seeks to implement key areas of the National Policy for Gender Equality (NPGE). A fundamental principle of the project is that it partners with the Dispute Resolution Foundation (DRF) of Jamaica in order to utilize Alternative Dispute Resolution (ADR) to eliminate deeply entrenched cultural beliefs, behaviours and practices. The Project is critical to ensuring the economic independence of women, especially those who remain in situations of economic dependency. It also focuses on promoting women's political empowerment as a strategy to advancing women's leadership and participation in power and decision-making.

228. The Commission recognizes the actions taken from State and non-State actors to address these problems, albeit with limited human and financial resources. For example, the Bureau of Women's Affairs operates crisis hot lines and shelters. It has also implemented a public education campaign to raise awareness regarding domestic violence. The NGO Woman Inc. runs two crisis centers which serve women who are abused in Jamaica, but these shelters are insufficient to meet the level of need. One shelter is located in Kingston and can accommodate only 11 people (including children) at any one time. Furthermore, shelter is temporary: a stay may last for up to ten days followed by a review, and is granted for emergencies only. The other center, located in Montego Bay, offers no facilities for women who need temporary accommodation and provides only counseling. In 2004 alone Woman Inc. received 485 requests from abused women seeking shelter. The organization was able to house no more than 80 of these women.

229. The Inter-American Commission underscores that the obligation of the State of Jamaica to act with due diligence to prevent and eradicate discrimination and violence against women is comprehensive, which requires the adoption and adequate implementation of legislation, public policies, programs, and services. State inaction in the face of discrimination and violence against women promotes their repetition.

230. On the basis of the preceding conclusions, the IACHR recommends to the Jamaican State that it:

- a. Adopt an integral state policy to address the specific needs of women and the problems of discrimination and violence they face and incorporate the perspective of gender in law and policy, supported by sufficient human and financial resources, and implemented by all key sectors and Ministries.
- b. Implement fully existing national legislation and public policies designed to protect women from acts of violence and discrimination and the attending political, economic, and social consequences. Designate

sufficient resources, and enact the necessary regulations to ensure effective implementation nationwide.

- c. Strengthen laws and policies aiming at ensuring that judicial protection and guarantees are available to women subjected to gender-based discrimination and violence.
- d. Continue undertaking public actions to address forms of violence and discrimination against women, including: adoption of measures to adequately implement the legal reforms adopted; review of existing legislation to make the necessary reforms according to current human rights standards; appropriate assignment of resources to gender equality issues; implementation of training and capacity-building programs for public officials; adoption of initiatives to address prevailing stereotypes in society regarding women; and establishment of needed shelters and services for victims; among others. Measures to address violence against women should also include interventions to eradicate the discrimination and the prevailing socio-cultural patterns which promote the repetition of this problem.
- e. Adopt due diligence related measures to ensure that cases of gender-based violence are promptly, fully and impartially investigated, that those responsible are properly punished, and that the victims obtain redress.
- f. Strengthen the capacity of institutions to combat the pattern of impunity in cases involving violence against women through effective criminal investigations, ensuring that such acts are properly investigated and punished.
- g. Adopt immediate measures to ensure that the public officials involved in prosecuting cases of violence and discrimination against women (including prosecutors, police, judges, court-appointed attorneys, administrative personnel and forensic medicine professionals) are properly educated about women's rights under domestic and international laws. Take further measures to ensure that the integrity and dignity of the victims and their relatives are respected at the time when complaints are filed and during the judicial process.
- h. Develop educational programs for the public, including early childhood programs, with the objective to cultivate respect for women as equals, and encourage recognition of their particular needs and right to live free from violence and discrimination.
- i. Adopt the necessary steps to accede to the Optional Protocol to CEDAW.

- j. Further develop and institutionalize participation spaces for women's rights organizations in the design of legislation, public policies and programs related to the rights of women.

CHAPTER VI RIGHTS OF CHILDREN

231. The IACHR has identified a series of priority concerns with respect to the rights of children in Jamaica. Children in state institutions suffer from neglect, abuse, and deplorable surroundings. The Inter-American Commission is also concerned with the condition of juveniles detained in Jamaican prisons and lock-ups. Further, the IACHR reiterates the strong concern it has expressed in the past about the prevalence and consequences of violence against children.

232. In its observations on the draft report, the Jamaican State highlights that it has been adopting measures to “address and ensure that the physical environment in all children’s homes and places of safety are in compliance with both national and international standards.” Jamaica mentions additionally that “where there are gaps in the provisions, as is identified by the Institution Monitoring System, efforts are made to address these. A safety determination is done and where the risk is high or remain unresolved, then efforts are made to re-locate children to other locations”. The State cites as an example the St. Augustine Place of Safety, where renovations have been underway since January 2012 to improve the main building housing the large dormitory for boys, and adds that “most of the wards have either been re-located to other institutions or are being housed on the premises in a location that is duly approved and supervised.”

233. The State also mentions that the Child Development Agency (CDA) has a zero-tolerance approach with respect to staff members or caregivers who are found culpable of offenses against children in State care. Jamaica adds that “the Agency will continue to act within the ambits of the Jamaican law and has in the past initiated action involving the Police where a criminal act has been committed or taken action (reprimand/warning, dismissal, re-assignment) in keeping with its Staffing Orders.”

234. The IACHR considers that these actions by the Jamaican authorities are steps in the right direction, and hopes that they are part of a general strategy to address the serious problems identified in this report.

235. The IACHR Rapporteur on the Rights of the Child visited Jamaica on February 26, 2008 in response to an invitation by the Jamaican Parliament. On that date the Special Rapporteur addressed the Parliament regarding the issue of violence against children. After his visit, the Minister of Education of Jamaica declared the State’s intent to adopt necessary measures to eradicate corporal punishment, which is still a common practice in educational facilities. The Commission applauds the development of an anti-corporal punishment campaign undertaken by the Ministry of Education aimed at the domestic level.²³⁸

²³⁸ Draft Report of the Working Group on the Universal Periodic Review, Jamaica, Human Rights Council Ninth Session, Nov. 1-12 2010, ¶ 35 A/HRC/WG.6/9/L.12.

A. Legal and policy framework

236. Jamaica is a party to the United Nations Convention on the Rights of the Child.²³⁹ Jamaica has also adopted domestic legislation regarding the rights of children. For example, in 2004 the Jamaican Parliament signed The Child Care and Protection Act into law. Additionally, the Jamaican Sexual Offenses Bill, which has been enacted into law, includes severe punishments for persons who abuse children.²⁴⁰

237. The State of Jamaica currently launches investigations into complaints of child abuse through the Office of the Children's Advocate.²⁴¹ The government has undertaken to improve the recruitment process and prescreening of staff of that Office in order to effectively hire people who would be better suited to contribute to the children's development.²⁴²

238. In addition, the Child Development Agency has established a complaints protocol whereby children who have been institutionalized are encouraged to submit their own complaints.²⁴³ The State of Jamaica has also recently established a committee to monitor the situation of children in places of safety. The Committee takes action if a child-care facility is overcrowded or if a child welfare institution is in breach of its license.²⁴⁴ In 2008, the State established a Task Force on Child Care to address policy issues including financing of institutions for the protection of children, the recruitment and screening of staff for institutions for children, and the social welfare of all children, including children with special needs.²⁴⁵ Jamaica explains in its response to the draft report that the Task Force was instrumental in establishing and operating a system by the name of Ananda Alert, which informs the public of missing children, in partnership with the media, practitioners and cell phone providers. The JCF has also established a Missing Person's Desk, which is currently prioritizing all missing children and removing the customary 24

²³⁹ United Nations Convention on the Rights of the Child, Ratified May 14, 1991.

²⁴⁰ IACHR, Hearing on the "Situation of children in juvenile detention centers in Jamaica," 137th Regular Session, November 3, 2009, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=117>.

²⁴¹ IACHR, Hearing on the "Situation of children in juvenile detention centers in Jamaica," 137th Regular Session, November 3, 2009, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=117>.

²⁴² IACHR, Hearing on the "Situation of children in juvenile detention centers in Jamaica," 137th Regular Session, November 3, 2009, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=117>.

²⁴³ IACHR, Hearing on the "Situation of children in juvenile detention centers in Jamaica," 137th Regular Session, November 3, 2009, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=117>.

²⁴⁴ IACHR, Hearing on the "Situation of children in juvenile detention centers in Jamaica," 137th Regular Session, November 3, 2009, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=117>.

²⁴⁵ IACHR, Hearing on the "Situation of children in juvenile detention centers in Jamaica," 137th Regular Session, November 3, 2009, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=117>.

hour waiting period. The State informed that between January 1 and September 25, 2011, the system recorded reports of 1,539 missing children; and that 451 of those children remained unaccounted for. Additionally, the response of Jamaica indicates that the Task Force staged “community-based initiatives, involving children, parents and teachers, on the overall safety and well-being of children”.

B. Effects of violence against children

239. Despite these positive steps forward by the Government, the conditions of many children in Jamaica remain dire. Children are especially vulnerable to the widespread violence that affects Jamaican society. The IACHR observed that children are being targeted for kidnappings that can result in rape and/or murder. From 2003 to the end of 2008, a total of 398 children have been killed either due to gang warfare or attacks, abductions, rape, and murder. Another 441 have been injured by guns. A large percentage of people affected by violent crime are people under the age of 18. In particular, many of those reportedly killed by police are adolescent youths.

240. Over the two year period of 2008-2009, 2,639 crimes were committed against children, and in 2009, 563 boys and girls aged 14 and younger were victims of major crimes.²⁴⁶ Of those 563 child victims in 2009, 81 were murdered, 189 were raped, and 291 were sexually assaulted.²⁴⁷ While some cases of violence against children have been solved and closed during the last five years, many remain unsolved, pointing to a failure of the State to apprehend child predators and murderers. For example, of the 71 child-murder cases recorded in 2007, 41 remain unsolved.

241. More children were put at risk during the declared state of emergency in 2010. During the state of emergency, it is reported that 20 boys, ages 14 to 17, were detained and processed by the police. Three teenagers, one, Dale Anthony Davis, last seen in the company of security forces who took him from his aunt, went missing, and have not been found. The case is under investigation by INDECOM. An account published by the United Nations Children Education Fund (Unicef) describes the impact on schoolchildren of the violence during the 2010 state of emergency:

Many West Kingston students came back to school still haunted by memories of terror. Some cried openly, while others whimpered quietly or were unnaturally withdrawn.

Another teacher who received the training, Ms. Atkins, was particularly disturbed by a three-year-old’s physical reactions. “He would start crying,

²⁴⁶ Office of the Children’s Advocate, “Special Report to Parliament on Children and Violence,” Nov. 29, 2010 at 6-7. Available at <http://www.ocajamaica.com/documents/children%20and%20violence.pdf>.

²⁴⁷ Office of the Children’s Advocate, “Special Report to Parliament on Children and Violence,” Nov. 29, 2010 at 6-7. Available at <http://www.ocajamaica.com/documents/children%20and%20violence.pdf>.

wet himself and dive under the table every time he saw police at the school,” she said.²⁴⁸

242. In its response to the draft version of this report, Jamaica informed that after the May 2010 events in Western Kingston, the Child Development Agency conducted a two day grief and trauma workshop in collaboration with UNICEF for 211 counselors. The CDA held counseling sessions within the affected communities, with the purpose of minimizing the risk and helping children deal with trauma. The State also informed of a Community Renewal Program aimed at “improving the lives of residents in volatile and vulnerable communities, including in Western Kingston”.

C. Children held in State custody

243. With respect to the conditions of children in State institutions, the Inter-American Commission received information that approximately 2,402 children are housed at 57 Children’s Homes and Places of Safety supervised by the Jamaican government’s Child Development Agency. Sources revealed that 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 reform and additional resources.

244. In its response to the IACHR draft report, the State accepts that there is the need for additional resources to support its various intervention programs in the residential sector, but does not accept that the levels of sexual, physical are rampant throughout the system. The State “concur[s] that this situation should be minimal or non-existent and has continued to initiate intervention programs to minimize such exposure”. The State provides the following summary of actions taken with a view to achieving that goal:

For the 2008/09 fiscal year, 92 or 19 percent of children in care were involved in the following critical incident categories: (a) sexual assault, (b) physical abuse, (c) sexual abuse, (d) emotional/verbal abuse, and (e) ward a victim of assault. This is marginally less when compared with 94 children in the 2007/08 period.

Of the number of cases, in 2008/09, 42 involved either employees of the institutions or third parties with whom the child may have come into contact as the perpetrator. The remaining 50 critical incidents occurred between children residing in the RCCFs. Of the number of similar cases in 2007/08, 40 involved employees or third parties as perpetrators with the remaining 54 occurring between children.

Arising from the investigation into all such critical incidents, a number of actions have been taken. In instances where the perpetrator is an adult,

²⁴⁸ Unicef, “After the violence, children in West Kingston heal with help from their teachers”, July 7, 2010, available at http://www.unicef.org/infobycountry/jamaica_54208.html.

one or a combination of actions are taken, namely (a) the referral of the matter to the police, (b) the dismissal of staff, (c) suspension without pay, and (d) verbal and written warnings.

In recent times, the CDA has had two matters referred to the Police Complaints Authority, suspended five individuals without pay, terminated the employment of at least 4 individuals, and reported matters to the police which have led to the prosecution of 6 matters before the Courts.

The CDA has made recommendations to Boards and the Management of private children homes and places of safety for the implementation of mechanisms for screening potential employees.

Children who are the perpetrators in critical incidents are referred to the CDA's Clinical Psychologists, Child Guidance Clinic and/or the Psychiatric team of the Ministry of Health. An assessment is made regarding the need for having a child re-located to a different environment and, depending of the nature of the critical incident, the matter is referred to the police/courts for action.

Incidents of this nature are also referred to the Office of the Children's Advocate and a report filed with the Office of the Children's Registry.

245. The State also informed that a Task Force on Residential Sector Reform was established in 2009 to "examine policy issues such as the financing and general physical infrastructure of Child Care Institutions, the recruitment and screening of staff and provision for the health, education and social welfare of all children, including children with special needs". This Task Force was asked to make recommendations on each item, and to prepare a Plan of Action with costs and an implementation timeline. Jamaica submits that it is highly committed to this Plan of Action, which is expected to significantly improve the situation of children in the custody of the State. The special focus of the Plan is on the following: social welfare issues; education and skills development; voluntary services; human resources and capacity building; special needs; and policy and legislative reform.

246. During its visit to Jamaica, a delegation of the Inter-American Commission visited the St. Andrew Juvenile Remand Centre for boys, a maximum security establishment. This center, designed for juvenile boys who await sentencing or placement, carries out three kinds of short-term programs: counseling, education, and recreation. However, the IACHR received disturbing accounts of the repressive system applied in this establishment, including corporal punishment, in contravention of a specific prohibition in Jamaican law.²⁴⁹

²⁴⁹ In the report on his 2010 visit to Jamaica, the UN Special Rapporteur on Torture expressed the following about the St. Andrew Juvenile Remand Center:

Only the boys who had been sentenced were allowed to go outside for specific projects, while those on remand were never allowed to leave the buildings, thus deprived of any recreational activities in the open air. The Special Rapporteur also received numerous

Continues...

247. The Inter-American Commission was informed that the conditions of detention of juveniles in police holding cells and detention centers fail to comply with international standards. In particular, the IACHR found that juveniles are held in overcrowded centers and are mixed with adults, a practice also prohibited under Jamaican law.²⁵⁰ Moreover, children who are in need of care and state protection, children who are deemed “uncontrollable,” and children who are accused of or who have been convicted of serious crimes are held together in the same facilities.²⁵¹

248. In response to the problem of juvenile detention in facilities with adults, in 2009 then Prime Minister Bruce Golding ordered all minors removed from adult detention centers and identified facilities for renovation to accommodate children.²⁵² However, it was reported to the Commission that as of March 2011, at least 110 children remained in police lock-ups.²⁵³ The State has informed the Commission that an existing facility is currently being renovated to serve as a Juvenile Remand Centre with accommodations for 208 boys. The Commission awaits confirmation that this new facility does indeed solve the problem of housing juveniles with adults in lock-ups.

249. Jamaica agrees in its response to the draft report that children should not be held at adult detention centres, and expresses that it is “working to reverse the current practice of the incarceration of children in police lock-ups and to implement measures to protect children in juvenile correctional facilities.” It notes in this regard that “the Metcalfe Street Secure Juvenile Centre was officially opened on 1 June 2011 and now houses all boys remanded in custody awaiting trial, who have been formally remanded by the Courts.” The

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allegations of corporal punishment, including beatings on the buttocks with wooden boards and being forced to kneel for prolonged periods of time with their hands in the air. The acting overseers admitted that kneeling was used as punishment. They seemed to be aware of the use of corporal punishment by certain warders, and although they stated that an internal investigation was initiated when a boy presented a complaint, they did not give the impression of taking serious measures to deal with the situation. At the time of the visit, four persons were interdicted, but their investigations had been ongoing for almost four years, with no concluding date in sight.

United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Jamaica, A/HRC/16/52/Add.3, 11 October 2010, para. 53, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-52-Add3.pdf>.

²⁵⁰ Child Care and Protection Act, section 67-68.

²⁵¹ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, Report to the IACHR, “The State of Human Rights in Jamaica Since the State of Emergency 2010”, March 2011, at 16, available at <http://www.jamaicansforjustice.org/docs/110406J2GF.pdf>

²⁵² Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, Report to the IACHR, “The State of Human Rights in Jamaica Since the State of Emergency 2010”, March 2011, at 15, available at <http://www.jamaicansforjustice.org/docs/110406J2GF.pdf>.

²⁵³ Jamaicans for Justice and George Washington University Law School International Human Rights Clinic, Report to the IACHR, “The State of Human Rights in Jamaica Since the State of Emergency 2010”, March 2011, at 15, available at <http://www.jamaicansforjustice.org/docs/110406J2GF.pdf>; see also IACHR, Hearing on “Human Rights Situation in Jamaica,” 141st Regular Session, March 25, 2011, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=122..>

State indicates that, as a result of the opening of the Metcalfe Street Secure Juvenile Centre, there are no male juveniles housed in adult facilities under the control of the Department of Correctional Services. Jamaica further informs that “upon arrival at the facility, the boys are given a medical examination and a psychological assessment” and that the average length of stay there ranges from 30 to 90 days, during which time “the boys participate in behavior modification interventions.” The State adds that all the officers employed at the Metcalfe Street Remand Centre received special training for handling youth offenders; and that they were also trained on the provisions of the Child Care and Protection Act of 2004, as well as on human rights and child psychology, before interacting with the boys at the Centre.

250. On this same issue, the Jamaican State adds the following:

The Department of Correctional Services (DCS) will continue to manage the Hill Top Juvenile Correctional Centre for boys and the Diamond Crest Juvenile Correctional Centre for girls. The DCS also houses female juveniles in the Fort Augusta Adult Correctional Centre and the Horizon Adult Correctional Centre. Both locations have been gazetted to house juveniles. Every effort is made to keep juveniles separated from adult inmates. This issue is being addressed by the Government of Jamaica as several other juvenile facilities are to be renovated, refurbished and constructed to better meet the needs of children in DCS facilities. The Government is currently taking steps to prepare a facility for the remand of girls who are in conflict with the law.

The Commission should also note that in the second and third quarter of 2011, the Child Development Agency piloted the separation of children in need of care and protection from those who have been remanded in the tertiary child protection system for behavior beyond the control of parents/guardians. An assessment will be conducted at the end of March 2012, and the results used to determine to what extent the initiative will be replicated within the child protection system.

The Agency’s Children’s Officers remain vigilant in their monitoring of police lockups and stations to ensure that children are not held in the same space as adults, and that the conditions under which they are being held does not in any way infringe on their rights. In addition to this initiative, the Jamaica Constabulary Force continues to provide the CDA with a weekly report of children who are being held in lockups. Using both sources of information, the Agency’s team continues to take the following action: make the necessary arrangements for the child to be removed to a Place of Safety or a pre-approved alternate site. The aim is to do so within 48 hours as required by the Child Care and Protection Act, 2004 (CCPA).

251. Another issue of serious concern is the use of corporal punishment and other forms of degrading treatment against children in state custody, which according to

information received by the Inter-American Commission is a continuing problem in Jamaica.²⁵⁴ The IACHR must remind the Jamaican State of its obligation to strengthen measures to prevent and punish the use of this form of discipline on children and adolescents under the custody and protection of the State's public institutions.²⁵⁵

252. With respect to this matter, the State notes in its response to the draft report that Section 62 of the Child Care and Protection Act 2004 does not sanction corporal punishment for children in residential care; that the Early Childhood Act does not sanction the use of corporal punishment in early childhood institutions (up to the age of 6 years); and that the Ministry of Education also restricts its use in primary and secondary schools. Jamaica adds that permitted disciplinary measures in children's homes do not include corporal punishment, and regulated by the Child Care and Protection (Children's Homes) Regulations (No. 22 of 2005). The State indicates that "in cases where complaints about corporal punishment in public institutions have been referred to the Office of the Children's Advocate (OCA), they have been investigated or they are either referred to the police for further investigation or action," and that "interventions have also been made by the OCA for compensation or reimbursement of medical bills on behalf of the children." Further, the State explains that there is a Child Abuse Prevention and Control Protocol developed to guide caregivers in alternative care facilities towards utilizing alternatives to corporal punishment. Finally, Jamaica informs that "there is a move to tackle the broader issue of violence in schools and to create a safer school environment by finding alternatives to managing behavioral problems." The Inter-American Commission welcomes all initiatives of law, policy and practice to eradicate the practice of corporal punishment and other forms of degrading treatment of children in state institutions.

253. The IACHR must also highlight the particularly troubling issue of the lengthy duration of the punishments meted out to children, as well as reports of the failure to provide legal counsel for children in the criminal justice system. The Inter-American Commission emphasizes that international standards dictate that the deprivation of liberty of a child may only be applied as an exceptional measure. In this regard, the UN Convention on the Rights of the Child sets forth at Article 37.b the duty of Member States to ensure that "no child shall be deprived of his or her liberty unlawfully or arbitrarily;" it also establishes that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

254. The UN Committee on the Rights of the Child has established that "every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within

²⁵⁴ Corporal punishment is unlawful in Jamaica as a disciplinary measure in penal institutions under Article 62 of the Child Care and protection Act. Its use in the penal system was ruled unconstitutional by the Jamaican Court of Appeal in December 1998, and it is not provided for in the Criminal Justice Reform Act, the Corrections Act, or the Child Care and Protection Act.

²⁵⁵ IACHR, Report on Corporal Punishment and Human Rights of Children and Adolescents, August 5, 2009, OEA/Ser.L/V/II.135, Doc. 14, para. 36, available at: <http://www.cidh.org/Ninez/CastigoCorporal2009/CastigoCorporal.1eng.htm#VII>.

24 hours.”²⁵⁶ For its part, the IACHR has added that “in observance of the obligation of special protection contained in Article 19 of the American Convention and Article VII of the American Declaration, States should establish an even shorter period of time for judicial oversight in a case in which a child has been taken into custody” and that “when one considers that children are still in the process of development, detention has a more harmful effect on them than on adults, and children are particularly vulnerable.”²⁵⁷ Accordingly, there is a need to implement alternative mechanisms to imprisonment.

255. Also worrisome are the reports of child abuse in Jamaica skyrocketing in recent years, according to a report from the country’s Office of Children’s Registry (OCR). According to statistics from the OCR, 3,784 reports of child abuse were received in 2008, as compared to 425 reports in 2007; and for the 2007-2011 period, the total number of such reports climbed to over 12,000.²⁵⁸

256. The Inter-American Commission is concerned by information presented during its 137th sessions, in a hearing on the situation of children in juvenile centers in Jamaica.²⁵⁹ Especially troubling was the situation at the Armadale Juvenile Correctional Center, discussed during this hearing, in which a fire resulted in the deaths of five girls. In addition to the fire and its consequences, reports indicated that these girls lived in deplorable conditions in that facility. Reports suggest that similar conditions exist throughout the juvenile state institutions in Jamaica.

257. The girls in the Armadale facility lived in inhumane and deplorable conditions, including a “bathroom dorm” where they were housed in the same room as a bathroom, and bathed without privacy. Another room of 12 by 20 feet housed twenty-three girls with seven bunk beds. The facility initiated lock-downs where the girls were locked in the room from 6:00 p.m. until 6:00 a.m., and given buckets to go to bathroom.²⁶⁰

258. At the facility, one teacher was assigned to teach 61 girls three subjects. There was little or no consistent recreational activity. Medical care was deficient and there was evidence of numerous instances of psychosis, sociopathic, anti-social activity and the existence of untreated mood disorders. There was only one psychologist employed to serve the entire Department of Corrections. In addition, two HIV positive girls were reported to

²⁵⁶ United Nations, Committee on the Rights of the Child, General Observation Nº 10, Children’s rights in juvenile justice, CRC/C/GC/10, April 25, 2007, para. 83.

²⁵⁷ IACHR, Juvenile Justice and Human Rights in the Americas, OEA/Ser.L/V/II., Doc. 78, July 13 2011, para. 255, available at: <http://www.cidh.oas.org/countryrep/JusticiaJuvenileng/jjiii.eng.htm>.

²⁵⁸ Jamaica Information Service, “More Jamaicans reporting cases of child abuse”, November 7, 2011, available at: <http://www.iis.gov.jm/news/110-labour-social-security/29176-more-jamaicans-reporting-cases-of-child-abuse>.

²⁵⁹ IACHR, Hearing on “Human Rights Situation in Jamaica,” 141st Regular Session, March 25, 2011, testimony of Susan Geoff, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=122>.

²⁶⁰ IACHR, Hearing on the “Situation of children in juvenile detention centers care in Jamaica,” 137th Regular Session, November 3, 2009, testimony of Susan Geoff, audio and video available at <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=16>.

have engaged in unsafe sexual activity with other girls. One girl was not receiving treatment and the authorities ignored the doctor's recommendation to relocate the girls.²⁶¹

259. Jamaica highlights in its response to the draft report that Armadale Correctional Center has been closed since May 2009, when residents were re-located; that the tragedy was the subject of a Commission of Enquiry; and that its recommendations are being followed by the State. According to the State "there is still a need for purpose built facilities and an increase in the number of psychiatrists, psychologists and other mental health professionals in the DCS" to address the need of children in its care. Jamaica also informs that "the Department of Correctional Services continues to care for the inmates and wards in our facilities in light of the limited resources available," and that "efforts to improve several aspects of the operations and facilities of the Department are under way."

260. The State also highlights its initiatives to satisfy the demand for treatment services to meet the psychological and behavioral problems of children in care, which include deploying a team of four clinical psychologists to provide support for children in care, which annually serves over 1,000 children in the tertiary child protection system. Also, mention is made of a team of five social workers are employed to operate out of seven government-managed facilities; the provision of Regional Child Guidance Clinics; as well as the measures to facilitate private medical and counseling practitioners who volunteer their services. A Smile Treatment and Recovery Centre is being set up, to meet the psychological needs of children on a more sustainable basis, and to provide support for children in both the child protection and juvenile correctional systems. Further, the State informs that upon entering the system, all children undergo a medical examination and are treated accordingly, and that efforts are made to meet all their treatment needs. Finally, Jamaica highlights that "all children in the child protection system are allowed to attend school (on or off site public school system)", and that the CDA "promotes the exposure of children age 14 and above to be assessed and exposed to vocational / life skills development programs to support their reintegration into communities and the wider society as productive citizens".

261. The IACHR appreciates the updated and valuable information presented by Jamaica, and welcomes the positive measures adopted in many of the problematic areas and issues identified in this report. However, the IACHR strongly believes that the Armadale tragedy underlined the desperate need for further and more decisive State action to address the grave structural deficiencies of the juvenile detention system. Jamaica must also address the lack of attention to the psychological health of children in detention, the failure to provide a proper education to detained children, the failure to treat HIV-positive children, and the lack of separation between the juvenile detention system and the child protection system.

²⁶¹ JFJ Children in State Care Report, *supra* note 282, at 3-7; 2009 Jamaica Hearing, *supra* note 266, testimony of Petitioner Susan Geoff of Jamaicans for Justice.

262. The Inter-American Commission recommends to the Jamaican State that it take the following actions:

- a. Develop a comprehensive national strategy for children, with particular attention and priority to marginalized and disadvantaged groups of children, which allocates adequate resources for its implementation.
- b. Implement initiatives of prevention and response to all forms of violence and sexual assault against children, which include the investigation, prosecution and punishment of such acts; and the creation of mechanisms to facilitate that children who have been victims of violence may be heard and present claims.
- c. Enact legislation that prohibits all forms of corporal punishment against children, in all settings, within the family, schools, alternative care institutions and detention facilities, places where children work and within the community.
- d. Incorporate an integral awareness of the rights of the child in designing public policies applicable to children, with particular emphasis on the eradication of corporal punishment in public institutions, such as detention centers, shelters, orphanages, hospitals, psychiatric institutions, schools and military schools, among others.
- e. Ensure that the deprivation of liberty of children is applied only as a measure of last resort, for the minimum period necessary, and limited to strictly exceptional cases, in a manner consistent with the duty of special protection of the child guaranteed in the American Convention, the Principles and Best Practices for the protection of persons deprived of liberty in the Americas, and the United Nations Convention on the Rights of the Child.
- f. Ensure that children are detained in adequate, sanitary facilities and not held with adults, and that those detained because they are in need of protection are separated from those convicted or accused of crimes.
- g. Provide education and skills-training to children in detention and maintain programs to help them to successfully reintegrate into society.
- h. Address the psychological and medical needs of all children held in institutions throughout the country, including periodic assessments and judicial review of the grounds for their presence in such institutions.

CHAPTER VII

DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

263. When the IACHR visited Jamaica in 2008 to discuss citizen security and violence, civil society organizations consistently emphasized the need for it to address discrimination based on sexual orientation. During its visit, the Inter-American Commission received reports of four murders in circumstances suggesting homophobia over a period of a year and a half. One such murder was reportedly a consequence of the firebombing of the house of a person thought to be homosexual; another man perceived to be homosexual was hacked to death by machete.

264. The IACHR has come to understand that discrimination based on sexual orientation, gender identity, and gender expression is widespread throughout Jamaica,²⁶² and that discrimination against those in the lesbian, gay, bisexual, trans, and intersex²⁶³ (LGBTI) communities is entrenched in Jamaican State institutions. Those who are not heterosexual or cisgender²⁶⁴ face political and legal stigmatization, police violence, an inability to access the justice system, as well as intimidation, violence, and pressure in their homes and communities.

265. In its response to the draft report, the Jamaican State holds that it “is committed to the equal and fair treatment of its citizens, and affirms that any individual whose rights are alleged to have been infringed has a right to seek redress.” The State further submits that “there is no legal discrimination against persons on the grounds of their sexual orientation” and that it “is opposed to discrimination or violence against persons whatever their sexual orientation.”

266. While discrimination based on sexual orientation may be widespread in Jamaican society, it is not perpetrated against or experienced by different members of the LGBTI communities in the same way. The Inter-American Commission will highlight below some of the ways in which discrimination is practiced on the basis of gender and gender identity. Finally, the IACHR is deeply concerned that violence and discrimination against

²⁶² Sexual orientation refers to attraction to and/or having sexual relations with members of the opposite sex, members of the same sex, or both. Gender identity and gender expression refers to persons who may self-identify as a different gender than the sex to which they were born, and/or those who do not express gender in traditionally “male” or “female” ways. In many ways these are intertwined – gay men may be identified as gay by the community for not conforming to a traditional masculine gender identity. See Principles on the application of international human rights law in relation to sexual orientation and gender identity (“Yogyakarta Principles”), March 2007, footnotes 1 and 2, p.6, available at http://www.yogyakartaprinciples.org/principles_en.pdf.

²⁶³ Trans-identified individuals may be transsexual, meaning that they identify as a different gender than the sex to which they were born (transsexual individuals may or may not choose to make a physical transformation to their identified gender), or transgender, which encompasses those who do not embrace traditional “male” or “female” gender identities. Intersex individuals are those whose biological sex characteristics do not fall within the medical construction of “male” and “female.”

²⁶⁴ Cisgender refers to those whose gender identity and expression matches the biological sex characteristics with which they were born.

the LGBTI community is a substantial factor contributing to the HIV/AIDS epidemic in Jamaica, discussed in the final section of this chapter.

A. Position of the Jamaican State

267. In failing to take an active stand against discrimination based on sexual orientation, the State is failing to respect and protect the rights of those targeted. Rather, Jamaica's major political parties have proposed or defended some of the world's most stringent anti-sodomy laws while adopting homophobic music for their political campaigns.²⁶⁵ There continues to be a lack of support for LGBTI rights amongst Jamaican government officials. In an interview with the British Broadcasting Corporation (BBC) on May 20, 2008, then Prime Minister Bruce Golding stated he would never appoint a cabinet minister whom he knew to be gay.²⁶⁶ When asked if he would want to live in a Jamaica wherein it would be entirely natural for a gay person to hold a cabinet position, he responded, "I do not know that that is necessarily the direction in which I want my country to go."²⁶⁷ In 2009 Ernest Smith, a governing-party member of Parliament, stated during a parliamentary debate that "homosexual activities seem to have taken over" Jamaica.²⁶⁸ He described homosexuals as "abusive" and "violent," and called for a stricter law outlawing homosexual conduct between men that would impose sentences of up to life in prison.²⁶⁹

268. In 2010, the delegation of Jamaica stated before the United Nations Human Rights Council that, regardless of the substantial evidence otherwise that will be discussed below, there have been "no credible cases" of arbitrary detention and/or harassment by the police of those in the LGBTI community.²⁷⁰ Jamaica also claimed there had been no evidence of any mob-related killing of LGBTI persons.²⁷¹ Furthermore, Jamaica's delegation reiterated that the State did not support recommendations to decriminalize sex between men.²⁷² The Commission regrets that Jamaica refuses to acknowledge the discrimination against persons subject to its jurisdiction and urges the

²⁶⁵ For the lyrics of these songs, see TIME, "The Most Homophobic Place on Earth?," Tim Padgett, April 12, 2006, available at: <http://www.time.com/time/world/article/0,8599,1182991,00.html>

²⁶⁶ British Broadcasting Corporation, Interview of then Prime Minister Bruce Golding by Stephen Sackur, May 20, 2008, available at: <http://www.youtube.com/watch?v=9cQx-zmHgg8>.

²⁶⁷ British Broadcasting Corporation, Interview of then Prime Minister Bruce Golding by Stephen Sackur, May 20, 2008, available at: <http://www.youtube.com/watch?v=9cQx-zmHgg8>.

²⁶⁸ Human Rights Watch, "Jamaica: Condemn Homophobic Remarks," February 19, 2009, available at: <http://www.hrw.org/en/news/2009/02/19/jamaica-condemn-homophobic-remarks>.

²⁶⁹ Human Rights Watch, "Jamaica: Condemn Homophobic Remarks," February 19, 2009, available at: <http://www.hrw.org/en/news/2009/02/19/jamaica-condemn-homophobic-remarks>.

²⁷⁰ United Nations Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review, Jamaica, Ninth Session, November 1-12 2010, A/HRC/WG.6/9/L.12, ¶ 31.

²⁷¹ United Nations Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review, Jamaica, Ninth Session, November 1-12 2010, A/HRC/WG.6/9/L.12, ¶ 13.

²⁷² United Nations Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review, Jamaica, Ninth Session, November 1-12 2010, A/HRC/WG.6/9/L.12, ¶ 101.18-101.25.

government of Jamaica to take the steps necessary in its power to bring it in line with its international human rights obligations.

B. Jamaican law

269. Jamaica's laws do not criminalize the *status* of being homosexual but rather outlaw *conduct*. The Jamaican Offenses Against the Person Act (also referred to as the "buggery" law) prohibits anal sex between men, in public or in private, punishable by 10 years in prison with hard labor.²⁷³ The law also makes "gross indecency" between two men, the acts of which are not defined, a misdemeanor punishable by 2 years in prison.²⁷⁴ Moreover, there is no law which prevents discrimination against an individual on the basis of his or her sexual orientation, gender identity, or gender expression.²⁷⁵ There is no legislation addressing hate crimes in Jamaica.

270. Jamaican law provides police great discretion in detaining individuals; the Offenses Against the Person Act permits a police officer to arrest without a warrant any person found "loitering" between 7 p.m. and 6 a.m. whom the police constable has "good cause to suspect of having committed, or being about to commit any felony" proscribed by the Act.²⁷⁶ Jamaican laws are also used as a pretext by police to detain men who do not conform to gender roles, and women who have sex with women are also targeted for arrest.²⁷⁷ There are accounts that the laws are actively enforced against men engaged in homosexual behavior.²⁷⁸ Thus, members of the LGBTI community face arrest, detention, and prosecution for their sexuality under the law.

271. The IACHR is concerned that laws against sex between consenting adult males or homosexual conduct may contribute to an environment that, at best, does not condemn, and at worst condones discrimination, stigmatization, and violence against the LGBTI community. The law provides a social sanction for abuse, as LGBTI persons are already thought of as engaged in illegal activity. Because LGBTI individuals are believed to be engaged in criminal activity, it is logical to infer that police are less likely to investigate crimes against them.

²⁷³ Jamaica Offenses Against the Person Act (1864), Section 76.

²⁷⁴ Jamaica Offenses Against the Person Act (1864), Section 79.

²⁷⁵ Jamaica Gleaner, "Laws of Eve - Do we really have gay rights in Jamaica?", May 26, 2008, available at: <http://jamaica-gleaner.com/gleaner/20080526/flair/flair3.html>.

²⁷⁶ Jamaica Offenses Against the Person Act (1864), Section 80; Human Rights Watch, "Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic," November 2004 at 22. Available at: <http://www.hrw.org/en/node/11894/section/1>.

²⁷⁷ Human Rights Watch, "Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic," November 2004 at 25. Available at: <http://www.hrw.org/en/node/11894/section/1>.

²⁷⁸ Human Rights Watch, "Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic," November 2004 at 25. Available at: <http://www.hrw.org/en/node/11894/section/1>.

C. A closed circuit of police and community violence

272. According to the Jamaica Forum for Lesbians, All-Sexuals, and Gays (J-FLAG), gay members of Jamaican society suffer “police harassment, arbitrary detention, mob attacks, stabbings, and harassment (...) by hospital and prison staff and targeted shootings of homosexuals.” The Commission has become well aware of the extent and intensity of violence facing the LGBTI community in Jamaica, from both the police force and civilians.

273. The IACHR has received information that indicates that in some instances, police are also perpetrators of violence, threatening and beating individuals suspected of being gay.²⁷⁹ Police abuse has reportedly led to mob killings or other violence, and there are accounts of men who are suspected of having sex with men who have had to flee their homes out of fear of attack after police abuse prompted violence by private community actors.²⁸⁰ Police violence not only reaffirms the message to the gay community that it has no recourse to justice and can find no protection from the state, but it is often a catalyst for further violence and abuse from the rest of the community.²⁸¹ In September 2007, it was reported that 98 gay men and lesbians were targeted between February and July 2007 in 43 separate mob attacks.²⁸² In 2009, J-FLAG reported 33 cases of serious injuries from mob attacks on gay individuals in 18 months.²⁸³ A recent account indicates that despite calls for tolerance from religious, political and social leaders, the attacks against LGBTI persons continued, and that in September 2010 “knife wielding thugs carried out ‘corrective rapes’ of two lesbians in separate incidents within days of each other.”²⁸⁴

274. The connection between police actions and community violence is reflected in a sizable incident of anti-gay mob violence that occurred on April 8, 2007, when mobs attacked a church full of some 150 people mourning the death of a gay man.²⁸⁵ The police that arrived on the scene of the attack socialized with members of the mob and allowed them to carry out their attacks. The only police actions that day were to search the vehicles of the gay men leaving the funeral under attack.²⁸⁶

²⁷⁹ Human Rights Watch, “Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic,” November 2004, at 19-20. Available at: <http://www.hrw.org/en/node/11894/section/1>.

²⁸⁰ Human Rights Watch, “Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic,” November 2004, at 20. Available at: <http://www.hrw.org/en/node/11894/section/1>.

²⁸¹ Human Rights Watch, “Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic,” November 2004, at 19. Available at: <http://www.hrw.org/en/node/11894/section/1>.

²⁸² Microsoft/National Broadcasting Company (MSNBC), “Jamaica: Still bigoted towards gays,” September 7, 2007, available at: <http://www.msnbc.msn.com/id/20642693/site/newsweek>.

²⁸³ The Economist, “Homophobia in Jamaica: A Vicious Intolerance,” Sept. 17, 2009, available at: <http://www.economist.com/node/14460193>.

²⁸⁴ Gay Jamaica Watch, “Human Rights and J-FLAG activists call for an end to violence against LGBT community”, September 24, 2010, available at: <http://gayjamaicawatch.blogspot.com/2010/09/human-rights-j-flag-activists-call-for.html>

²⁸⁵ Human Rights Watch, “Jamaica: Shield Gays from Mob Attacks,” February 1, 2008.

²⁸⁶ Human Rights Watch, “Jamaica: Shield Gays from Mob Attacks,” February 1, 2008.

275. The IACHR is troubled by such police complicity in violence against the LGBTI community as well as by police failure to hold others accountable for acts of violence or discrimination against LGBTI individuals. Police involvement in discrimination leads others to believe that they may harm those of non-conforming sexuality or gender, and may do so with impunity. Thus, the threat of violence is ever present for those who are not heterosexual or cisgender.

276. Police can use their great discretion to arrest and charge under the laws of Jamaica to endanger those of the LGBTI community. Once the police arrest or charge someone for buggery or gross indecency, the Jamaican press then publishes the names of those charged, putting these individuals at risk of physical assault from the community.²⁸⁷ Besides the seriousness of these violations, the IACHR notes that in Jamaica defenders of the rights of LGBTI persons cannot exercise their freedom of association to protect their own rights, since the very purpose of these organizations relates to conducts deemed illicit.

277. Furthermore, 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. In 2004 and 2005, respectively, two prominent gay activists, Brian Williamson and Steve Harvey, were murdered.²⁸⁸ In addition, members of J-FLAG have received death threats, as well as threats to burn down its offices.

278. On March 21, 2011, the Commission granted precautionary measures to Maurice Tomlinson after receiving a request alleging that Mr. Tomlinson is facing great risk due to his work as a defender of the rights of LGBTI persons in Jamaica.²⁸⁹ The request indicated that Mr. Tomlinson had been receiving death threats via email and State authorities had not moved to take protective action. The IACHR asked the State of Jamaica to adopt measures necessary to guarantee Mr. Tomlinson's life and physical integrity and to inform the Commission about the subsequent investigation into the facts that led to the adoption of precautionary measures.

279. The State responded the following:

The Jamaica Constabulary Force (JCF) has developed a diversity policy which guides members of the force in their professional dealings with persons of minority groups such as lesbians, gays and transgender. The JCF prior to the development of this policy met and discussed its proposal with members of minority groups such as Jamaica Forum of Lesbians, All-Sexuals and Gays (JFLAG). The force has had several meetings with

²⁸⁷ Human Rights Watch, "Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic," November 2004, at 23. Available at: <http://www.hrw.org/en/node/11894/section/1>.

²⁸⁸ Human Rights Watch, "Jamaica: Shield Gays from Mob Attacks," February 1, 2008.

²⁸⁹ IACHR, Precautionary Measure 80/11 - Maurice Tomlinson, Jamaica, summary available at: <http://www.cidh.org/medidas/2011.eng.htm>.

members of the JFLAG and has shared contact information of some members of the force with them which they are allowed to use for security purpose.

The JCF denies committing any act of violence or discrimination against members of any minority groups to include LGBT or persons suffering from HIV/AIDS. The JCF denies any impunity of complicity in violence against LGBT persons or persons suffering from HIV/AIDS.

The JCF seeks at all times to uphold the human rights of every person and deliberately rains its members to uphold such human rights in their dealing with members of the public. If members fail to uphold such principles, and it is brought to the attention of the authorities, disciplinary measures are taken against such person(s).

280. The Inter-American Commission welcomes all initiatives by the security forces of Jamaica, especially the JCF, to respond to reports of abuse related to sexual orientation, gender identity, gender discrimination, and HIV/AIDS, in a manner consistent with the international human rights obligations of the State.

D. Access to justice

281. The IACHR is also deeply troubled that members of the gay community in Jamaica who are subject to violence and other discrimination are afraid to report these incidents to the police out of a fear of further repercussions from police forces themselves.²⁹⁰ Because of risk of police abuse, lack of accountability, and subsequent community threat after exposure, LGBTI persons are denied access to justice when their rights are violated. Many of these acts of violence go unreported to police, but even when they are prosecuted by the state, a murder charge may be reduced to manslaughter if the victim is gay and the defendant claims provocation, as was the case in a murder of a gay Anglican priest, stabbed to death in his vicarage in 2006.²⁹¹

282. As a consequence of actual and perceived exclusion from the protection of the justice system, those who are vulnerable remain in dangerous situations. For instance, LGBTI persons are far more likely to stay in abusive relationships without seeking police protection, as they feel they cannot come forward about the domestic violence occurring in their relationships which are already considered criminal.²⁹²

²⁹⁰ Jamaica Gleaner, "Laws of Eve - Do we really have gay rights in Jamaica?", May 26, 2008, available at: <http://jamaica-gleaner.com/gleaner/20080526/flair/flair3.html>.

²⁹¹ The Economist, "Homophobia in Jamaica: A Vicious Intolerance," Sept. 17, 2009, available at: <http://www.economist.com/node/14460193>.

²⁹² IACHR, Hearing on "Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean," 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

283. In its response to the draft report, Jamaica asserts that “there is clear evidence of persons in violent relationships have sought and received the protection of the police and the Courts” and that “several such cases are dealt with in the Resident Magistrates Court”. However, the State response provides no further information to support this affirmation; nor does it indicate that any such cases involved LGBTI persons.

E. Non-response of the State to discrimination within the community

284. The general obligation provided for in Article 1.1 of the American Convention imposes on the State the duty to respect and guarantee human rights to all persons under its jurisdiction, with no discrimination whatsoever. This requires taking measures to promote a culture of respect for human rights, especially where necessary to overcome social, cultural or religious perceptions that result in discrimination or violations of the rights of certain groups of persons.

285. Discrimination based on gender identity is deeply rooted in certain sectors of society. Reports in the media regularly reflect that within certain sectors of society religion is cited as a justification for such discrimination. In a 2010 hearing before the IACHR, representatives of civil society reported that Christian heritage is used as a justification for violence and discrimination against LGBTI persons in Jamaica.²⁹³ Further, press reports indicate that in 2010 the president of the Islamic Council of Jamaica announced that homosexuality was illegal and should be punishable by death.²⁹⁴ In that same 2010 hearing it was reported that when 2,000 people in a mall attacked 3 people believed to be gay, the violence was justified as “moral cleansing.”²⁹⁵ One of the participants in the hearing said that violence against LGBTI persons was characterized by some as “a service to society.”²⁹⁶

286. The social attitudes about sexuality and gender identity affect LGBTI persons within their families and their homes. In 2004, a father reportedly invited a mob to lynch his son at school after learning that he was gay.²⁹⁷ Families may eject LGBTI youth from the home once learning of their sexuality or gender identity, leaving them more

²⁹³ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

²⁹⁴ Jamaica Observer, “Muslim Leader Blasts Gay Lifestyle,” Karl Walker, Feb. 1, 2010.

²⁹⁵ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

²⁹⁶ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

²⁹⁷ TIME, “The Most Homophobic Place on Earth?”, Tim Padgett, April 12, 2006, available at: <http://www.time.com/time/world/article/0,8599,1182991,00.html>.

vulnerable to abuse and sexual violence on the streets.²⁹⁸ Rates of suicide and self-harm among LGBTI persons are reported to be high.²⁹⁹

F. The heterogeneity of discrimination

287. Although many members of the LGBTI community in Jamaica experience discrimination based on sexuality, gender identity, and gender expression, the IACHR understands that discrimination and violence affect different members of the LGBTI community differently. Although the laws against “buggery” and “gross indecency” do not specifically address sexual acts between women, rampant homophobia puts women who do have sex with women, or women who do not conform to a more feminine gender identity, at risk. Lesbians in Jamaica face “corrective rape,” with the purported “justification” that rape will “cure” gay women and “make them straight.”³⁰⁰ In 2009, J-Flag reported that two lesbian couples had been attacked and raped by men.³⁰¹ A letter to the Jamaican Observer reported that in September 2010, two more women were violently attacked; one woman held at knife-point and raped, the other gang-raped by four men who had complained of the woman’s “butch” appearance.³⁰² Women who have sex with women do not believe that the justice system will help them, as exposing their identity could put them at greater risk for police abuse and rape.³⁰³

288. Transgender and transsexual people cannot help but be visible in the community, and thus they live in perpetual fear, struggling to do basic, everyday activities.³⁰⁴ Many are thrown out of their homes when their families learn of their gender nonconformity; however, those that remain in the family home may face increased risk of

²⁹⁸ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

²⁹⁹ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

³⁰⁰ Human Rights Watch, “Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic,” November 2004, at 50-51. Available at: <http://www.hrw.org/en/node/11894/section/1>.

³⁰¹ “Homophobia in Jamaica: A Vicious Intolerance,” *The Economist*, Sept. 17, 2009, available at <http://www.economist.com/node/14460193>.

³⁰² “Protect Lesbian and Gay Population,” Letters to the Editor, *Jamaica Observer*, Sept. 23, 2010, available at http://www.jamaicaobserver.com/letters/Protect-lesbian-and-gay-population_7987970; also IACHR hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

³⁰³ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

³⁰⁴ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

sexual, physical, and psychological abuse from family members.³⁰⁵ Trans persons struggle to gain lawful employment, as their state identification documents do not match their assumed gender identity, and the homophobic culture in Jamaica leads employers to turn them away.³⁰⁶ Therefore, trans people may be forced to turn to sex work, where they are more vulnerable to violence and police extortion for money and/or sex.³⁰⁷

G. Discrimination and HIV/AIDS in Jamaica

289. Homophobia in Jamaica pushes those most at risk of infection underground. The fear of being outed as gay makes it difficult for people within the community to access medical services that might reveal their sexual orientation. Those who are infected are afraid to pursue medical care lest they be perceived as gay and targeted for their sexual orientation.³⁰⁸ According to one doctor, in some areas of Jamaica men with HIV/AIDS were murdered by having tires put around them and then being set alight.³⁰⁹

290. According to reports received by the IACHR, HIV infected persons are reportedly denied equal access to healthcare due to discrimination based on their medical status. Even when medical help is sought, doctors will sometimes breach confidentiality and alert the community as to the sexual orientation or infection status of the patient, subjecting the individual to the threat of violence.³¹⁰ Those who manifest physical symptoms may be refused public transportation, keeping them from accessing medical care.

291. In this regard, the Jamaican State responded in its observations to the draft report that “persons who are HIV positive are not denied access to health care services, neither has there ever been any report of medical doctors breaching confidentiality and alerting the community of the sexual orientation or health status of a patient.” The State does recognize that there is a lack of patient confidentiality, and adds responds that “in light of this, the Ministry of Health is currently undertaking a review of all laws, policies, protocols and systems related to confidentiality of patient information in an

³⁰⁵ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

³⁰⁶ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

³⁰⁷ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

³⁰⁸ Human Rights Watch, “Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic,” November 2004, at 3. Available at: <http://www.hrw.org/en/node/11894/section/1>.

³⁰⁹ The Atlantic, “How AIDS Became a Caribbean Crisis,” Micah Fink, September 2009, available at <http://www.theatlantic.com/magazine/archive/2009/09/how-aids-became-a-caribbean-crisis/7699/#>.

³¹⁰ Human Rights Watch, “Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic,” November 2004, at 3, 41-42. Available at: <http://www.hrw.org/en/node/11894/section/1>.

effort to strengthen current policies and protocols, improve enforcement mechanisms and address gaps as it relate to patient confidentiality.” Jamaica explains that it aims “to reduce the risk of HIV infections and to ensure that persons living with and affected by HIV can access treatment, care and support services without fear of stigma or discrimination.”

292. The IACHR is further concerned that laws criminalizing sex between men or homosexual conduct --which have the consequence of obstructing access to medical services-- have a direct effect on infection rates and may be a substantial factor contributing to the HIV epidemic in Jamaica. In the Bahamas 10% of gay men are HIV/AIDS positive, which is similar to other English-speaking Caribbean nations that do not criminalize homosexual acts; on the other hand English-speaking Caribbean nations that do criminalize such conduct have a 20-30% rate or higher of infection among the gay male population.³¹¹ In Jamaica itself, approximately 27,000 persons in Jamaica are reported to be infected with HIV, 73% of them between the ages 20 and 49. While the infection rate of the general population is estimated to be 1.6%, 31.1% of gay men are believed to be HIV/AIDS positive.³¹²

293. Homophobia in Jamaica puts both the LGBTI community and the general population as a whole at greater risk of contracting HIV/AIDS. Experts report that men who carry HIV will marry women and have children or maintain girlfriends to shield themselves from allegations of homosexuality, spreading the disease further.³¹³ Public education and prevention outreach with the HIV infected population is difficult, because the disease remains a social taboo in Jamaican society. Even when the State carries out anti-stigma campaigns, such as the one launched in December 2009, the fear of being subject to discrimination continues to affect the implementation of services for persons at risk, since sodomy continues to be illegal.³¹⁴

294. As condoms are associated with men having sex with men and HIV/AIDS, it is reported that men in the general population will refuse to carry them. When the Commissioner of Corrections proposed condoms be distributed to prisoners and correctional officers, correctional officers walked off the job, apparently offended that even distributing condoms implicated them as gay. The officers did not return to the job

³¹¹ IACHR, Hearing on “Punitive Measures and Discrimination on the Basis of Sexual Identity in the Caribbean,” 140th Sessions, October 26, 2010, Audio and video available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=120&page=2>.

³¹² Julia Greenberg of AIDS-Free World, Worldfocus, Sept. 28, 2009, available at <http://pulitzergateway.org/2009/09/julia-greenberg-of-aids-free-world-on-hiv-in-the-caribbean>.

³¹³ The Atlantic, “How AIDS Became a Caribbean Crisis,” Micah Fink, September 2009, available at <http://www.theatlantic.com/magazine/archive/2009/09/how-aids-became-a-caribbean-crisis/7699/#>; Miriam Maluwa, the head of UNAIDS in Jamaica, blamed the sodomy law for forcing men to pretend they are not gay, and that is “a ticking bomb.” According to a government study, one-third of gay men reported having sex with at least two women in the past year. 40% of the people with HIV/AIDS in Jamaica are female. See Worldfocus, “A Deadly Cycle,” September 29, 2009, available at <http://pulitzergateway.org/2009/09/a-deadly-cycle/>.

³¹⁴ Jamaica National HIV/STI program, UNGASS Country progress Report 2010, p. 39, available at: http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/2010progressreportsubmittedbycountries/jamaica_2010_country_progress_report_en.pdf

until the Commissioner apologized and agreed condoms would not be distributed. The very possession of condoms has triggered police harassment of HIV/AIDS workers and sex workers, and some outreach workers who have passed out condoms to at-risk populations have been arrested.³¹⁵ Even though condoms are considered contraband in Jamaica's prisons, prison guards reportedly sell them to the inmates who can afford them; and those who can't reportedly resort to the use of plastic bags.³¹⁶

295. With respect to this, the State denies that there is some general association in Jamaica between condoms and men who have sex with men. However, it agreed that "the negative view in Jamaica towards homosexuality is one of the factors that put members of that community at a greater risk of contracting HIV," and that "the attitude towards homosexuality is deeply ingrained and based on cultural and religious mores and these perceptions are very difficult to change." The State also expressed that it "continues to work at making prevention and treatment services accessible and available to members of the community." It further informed that through its National HIV Program, "staff members actively search for the most vulnerable members of the community and provide a slate of HIV prevention interventions, channel those in need of care into the health care system and, where necessary, form linkages with social service agencies inclusive of remedial education institutions."

296. In an interview in 2004, the executive director of Jamaica's Program Coordination Unit at the Ministry of Health reported that the Ministry had identified men who have sex with men (MSM) as a target population for HIV/AIDS information and services. However, he stated that "to date, we don't promote direct programs or services to MSM as a group because the existing laws impede this work [and] because [of] the high level of stigma and discrimination, they're not open to getting services through the public sector."³¹⁷ Thus, the Ministry of Health relies upon independent organizations like the NGO Jamaica AIDS Support for Life (JAS) to provide HIV/AIDS services to gay men.

297. The IACHR received information that amendments were being made in December 2011 to the Public Health Order to remove discriminatory provisions relating to persons with HIV and AIDS. In that regard, the Minister of Health was quoted as saying that "the Ministry has completed the draft submission, which has been submitted to the relevant state entity, to fulfill the consultation requirements for legislative and/or regulatory changes" and that the amendments represent a "clear and practical demonstration of this government's commitment to addressing stigma and discrimination against persons infected and affected by HIV and AIDS."³¹⁸ On the same date, the

³¹⁵ Human Rights Watch, "Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic," November 2004, at 33-34. Available at: <http://www.hrw.org/en/node/11894/section/1>.

³¹⁶ Aids-Free World, "Jamaican Law, Homophobia, and HIV", Maurice Tomlinson, August 1, 2011, available at: <http://www.aidsfreeworld.org/Our-Issues/Homophobia/Jamaican-Law-Homophobia-and-HIV.aspx>.

³¹⁷ Human Rights Watch, "Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic," November 2004, at 33. Available at: <http://www.hrw.org/en/node/11894/section/1>.

³¹⁸ Caribbean 360 - News Around the Caribbean, "Jamaica to amend law to reduce HIV/AIDS discrimination", December 9, 2011, available at: http://www.caribbean360.com/news/jamaica_news/520869.rss#ixzz1g4zrWLet

Ministries of Health, of Youth Sports and Culture, and the Office of the Services Commission, launched HIV/AIDS Workplace policies, aimed at addressing discrimination. The Inter-American Commission welcomes such initiatives and hopes that they become part of a more integral approach toward bringing legislation and practices into conformity with human rights obligations under the American Convention and other international instruments.

298. Those who perform HIV/AIDS outreach with the gay community work under constant fear, however, as they come under the same kind of discrimination that the LGBTI community faces. The police actively impede the government-supported HIV/AIDS programs, and police harassment extends to HIV/AIDS workers who attempt to extend services to men who have sex with men or sex workers. JAS outreach workers have been arrested and detained for handing out condoms. Furthermore, JAS cannot report its location or publicize the type of work that it does with the gay community; one of JAS's program coordinators was abducted and killed, reportedly for providing HIV/AIDS services to gay community.³¹⁹

299. There are those persons living with HIV/AIDS who are particularly at risk for discrimination and abuse. The Inter-American Commission was informed that once an HIV-infected person's family and community were made aware of his/her status, they were likely to be rejected from their homes and communities. HIV persons who are homeless constitute a particularly vulnerable population in need of a more adequate State response.

300. Moreover, while sexual violence puts all women in Jamaica at risk for acquiring HIV/AIDS, lesbians, who may be targeted for their sexual or gender orientation, reportedly face an even greater risk of rape and thus a greater risk of contracting the virus.³²⁰

301. Finally, the Commission is also concerned with the safety of HIV positive persons in state custody and the measures taken by state officials to medically protect both them and those without HIV. During its hearings, the Commission heard reports of HIV positive girls engaging in sexual activity with other girls at a state facility. The girls in the facility were not receiving treatment and the authorities ignored the doctor's recommendation to relocate the girls to other facilities equipped to deal with their needs.³²¹

302. In its response to the draft report, Jamaica recognized that "discrimination surrounding HIV and AIDS (which is associated with promiscuity, myths

³¹⁹ Worldfocus, "A Deadly Cycle," Sept. 29, 2009, available at <http://pulitzergateway.org/2009/09/a-deadly-cycle/>.

³²⁰ Human Rights Watch, "Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic," November 2004, at 16-17. Available at: <http://www.hrw.org/en/node/11894/section/1>.

³²¹ IACHR, Hearing "Situation of Children in Juvenile Detention Centers in Jamaica," 137th Sessions, November 3, 2009, audio and video available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=117>.

surrounding transmission by casual contact, fear of death, and sexual orientation) affects persons' health seeking behavior as it relates to the disease;" and that "it impacts the willingness of persons to get tested and know their status; it can affect their willingness to seek medical treatment and their ability to adhere to medication." The State expresses its commitment to ensure that health service providers "are continuously sensitized and trained to adopt more accepting attitudes and deliver professional and confidential service towards all persons seeking health care services regardless of health status, gender identity and sexual orientation," as part of a key strategy within the 2012-2017 National Strategic Plan on HIV/AIDS. Jamaica also informs that "the Ministry of Health, through the National HIV/STI Programme (NHP), continues to collaborate with non-governmental groups and supports the provision of services that are friendly and, therefore, accessible to those most at risk populations, such as men who have sex with men, youth and sex workers" and that the revised behavior change communication (BCC) strategy "also provides the framework for the prevention interventions, with one of the key focus areas being vulnerable populations, including men who have sex with men."

303. The State also submits that there has been significant improvement in attitudes towards persons with HIV in Jamaica. Its view is that this has resulted in communities and family members being more accepting of persons once they become aware of their condition, and that "it is no longer the case that persons with HIV are automatically ejected from their homes or communities once their status becomes known." The Ministry of Health "has scaled up its intervention with members and leaders of faith based organizations to improve attitudes and address discrimination both within their organizations and within the communities which they serve." This collaboration is extended to organizations such as JFLAG, Jamaica AIDS Support for Life, and Caribbean Vulnerable Communities (CVC). The State informs that the Ministry of Health "is also seeking to scale up its work with the police to enable more effective intervention and dispute resolution as it relates to acts of discrimination and violence that are HIV related, gender based and or a result of sexual orientation." On April 29, 2011 then Prime Minister Bruce Golding and then leader of the opposition and current Prime Minister Portia Simpson Miller signed a "Declaration of Commitment to eliminate stigma and discrimination and gender inequality affecting the HIV response in Jamaica". The State points out the expectation that this Declaration "will also provide leverage for the passage of necessary policy and legislation to action to address HIV related stigma and discrimination and gender inequality".

304. The response of the Jamaican State shows that there have been several recent initiatives to address some of the issues identified in this chapter. These are valuable steps forward. Given that the problems have been pervasive, and that the State itself admits the seriousness of the situation, the IACHR must remind the Government and the people of Jamaica that the right of all persons to be free from discrimination is guaranteed by international human rights law, specifically the American Convention on Human Rights.³²² The State must take measures to ensure that people within this group

³²² Article 1.1 of the American Convention requires states to respect the rights and freedoms contained within the Convention, and Article 24 gives all people a right to be equal before the law and deserving of equal protection without discrimination. Discrimination based on sexual orientation, gender identity, and gender

Continues...

can associate freely; can exercise their basic rights without discrimination, including to associate freely; and exercise those rights without fear of attack.

305. Based on its observation of the situation described in this chapter, the IACHR recommends to the Jamaican State that it:

- a. Enact legislative reforms designed to bring Jamaica's laws into conformity with the American Convention on Human Rights, including repealing laws criminalizing homosexual conduct; enacting anti-discrimination legislation to protect the human rights and equal treatment of LGBTI and HIV/AIDS infected persons; and criminalizing hate crimes based on homophobia. Modify laws which allow police broad discretionary power to arrest and detain individuals without warrant or cause.
- b. Take urgent action to prevent these human rights abuses, including through the adoption of public policy measures and campaigns against discrimination based on sexual orientation. Government officials must take measures to defend sexual minorities from discrimination and stigmatization, and adopt policies that ensure that LGBTI persons may fairly compete for positions within the government.
- c. Train all criminal justice officials on international human rights standards and the rights contained in the American Convention as they apply to LGBTI persons, and nondiscrimination. Give those within the criminal justice system information and training on issues around sexuality, gender identity, and HIV/AIDS.
- d. Give specific training to police officials regarding international human rights standards and non-discrimination, as well as issues surrounding sexual orientation, gender identity, gender discrimination, and HIV/AIDS. Ensure training occurs at all ranks of police officials. Create an independent body to field, investigate, and effectively sanction police abuses and charges of discrimination.
- e. Investigate thoroughly and impartially all acts of discrimination based on sexual preference, especially acts of violence that result in violations of the rights to physical integrity and to life.
- f. Train healthcare workers and providers on issues around sexuality, gender identity, and how these play a role in exposing a person to HIV/AIDS. Ensure that healthcare workers are instructed on the right to privacy and keeping medical information confidential. Develop a

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discrimination also implicates Article 11 creating a right to privacy, Article 15 granting right of assembly, Article 17 protecting the right to a family, Article 25 containing the right to judicial protection.

nationwide initiative to sanction those healthcare workers who refuse to treat LGBTI Jamaicans or who violate the privacy of their patients.

CHAPTER VIII RIGHTS OF PERSONS WITH DISABILITIES

306. Jamaica was one of the first nations to ratify the United Nations Convention on the Rights of Persons with Disabilities on March 30, 2007. The State has been working over several years on a draft Disabilities Act to make locations and services throughout Jamaica more accessible to the disabled. The IACHR commends these developments, including the work of the Jamaica Council for Persons with Disabilities (JCPD). The JCPD provides field officers and social workers, and offers scholarships to those with disabilities. Since 1991, when the Government of Jamaica implemented a National Policy for Persons with Disabilities, the JCPD has made progress. The Inter-American Commission commends Jamaica on its National Development Plan, Vision 2030 Jamaica, for including a draft sector plan on Persons with Disabilities, detailing a plan to comprehensively address disability rights and issues in the next two decades.³²³ However, significant steps must be taken to address adequately the challenges faced by Jamaica's disabled.

307. Jamaica signed the Inter-American Convention on the elimination of all forms of discrimination against persons with disabilities on June 8, 1999. This instrument is designed to ensure that disabled persons can fully integrate within society without being unjustly excluded on the basis of their disability. The Convention calls for states to promote justice for the disabled through legislation, social initiatives, education for the disabled and for others regarding acceptance of those with disabilities, and making buildings, methods of communication, recreation, offices, and homes available to be accessed by the disabled.

308. According to the Pan American Health Organization, nearly one in ten Jamaicans has a physical disability.³²⁴ The disabled in Jamaica face many challenges in accessing basic services, such as using public transportation, communication, education and access to buildings, as well as attitudes within society that may be based on ignorance and discrimination.

309. One of the most difficult obstacles faced by the disabled is finding employment. A recent survey indicated that only 5% of respondents who had a disability were employed and only 4% of those who indicated that they had a disability, had access to the Internet.³²⁵ Despite projects funded by the Ministry of Labor and Social Security seeking to improve this situation, only a small fraction of disabled Jamaicans are employed

³²³ Vision 2030 Jamaica: National Development Plan, Persons with Disabilities Draft Sector Plan, June 2009. Available at http://www.vision2030.gov.jm/Portals/0/Sector_Plan/Microsoft%20Word%20-%20Persons%20with%20Disabilities%20pdf.pdf.

³²⁴ Pan American Health Organization, Jamaica: Country Profile, available at http://new.paho.org/jam/index.php?option=com_content&task=view&id=30&Itemid=1.

³²⁵ Mona School of Business – University of the West Indies, “Kingston Caribbean Broadband and ICT Indicators Survey Jamaica Report”, Hopeton Dunn, Telecommunications and Policy Management Program, May 2011.

in the formal sector. The Minister of Labor and Social Security stated that persons with disabilities have been facing a "serious uphill battle" and living on the margins of society.³²⁶

310. Persons with mental illnesses in Jamaica are also affected by the lack of appropriate and timely care.³²⁷ Most of the patients are sent for treatment to the capital city, Kingston, due to lack of facilities in other areas. The World Health Organization has indicated that this situation violates its regulation regarding treatment of patients as near to their homes or communities as possible, and called on the Jamaican State to address this issue in the revision of its mental health policies. The WHO also noted that there are approximately 300 mental patients at the Kingston mental hospital who should be in a nursing home, infirmary, or at home with their relatives; however, due to the shortage of social services, some of these persons have been at the mental hospital for most or all of their adult lives.³²⁸

311. UNICEF has reported that only 10% of children with disabilities in Jamaica are enrolled in formal school-based and other programs that receive public funding, and that the level of stigma facing persons with disabilities in that country continues to be a major contributor to exclusion.³²⁹ Having ratified the Convention on the Rights of the Child, Jamaica recognizes under Article 23 thereof that "a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self reliance and facilitate the child's active participation in the community."

312. The Center for Disability Studies of the University of the West Indies has recently published a report intended to serve as a guide to policy makers in improving the general education system for persons with disabilities in Jamaica. The results of the study show, among other things, that there is very low level of access for children with disabilities in general education facilities, very few of which have ramps and almost none have bathroom facilities for the disabled.³³⁰

³²⁶ Jamaica Information Service, "Government Support for Economic Empowerment of Disabled Continues into 2009/10", available at: <http://www.jis.gov.jm/news/archive/20995-labour-government-support-for-economic-empowerment-of-disabled-continues-into-2>.

³²⁷ Jamaica Observer, "Mental health shame", February 6, 2011, available at: http://www.jamaicaobserver.com/news/Mental-health-shame_8337363#ixzz1gEqdBwd1.

³²⁸ World Health Organization, WHO-AIMS Report on Mental Health System in Jamaica, 2009, pp. 14-15, available at: http://www.who.int/mental_health/Jamaica_who_aims_report.pdf.

³²⁹ UNICEF, Situation analysis on excluded children in Jamaica, update 2006, http://www.unicef.org/jamaica/resources_3950.htm. The same document refers to a UNICEF-supported study that found that some parents viewed the birth of a disabled child as having supernatural connections: 40 % said the child was "sent by God" while 18% thought the disability was due to an evil spirit, punishment for a sin, or looking at a disabled person during pregnancy.

³³⁰ University of the West Indies Center for Disability Studies, Report on access and inclusion for persons with disabilities in the Jamaican education system, Floyd Morris, May 1, 2011, available at: <http://www.eyecarecaribbean.com/education-for-all-caribbean/official-report-on-access-and-inclusion-in-jamaican-schools>.

313. The case of the City of Portmore, close to Kingston, illustrates the serious access problems faced by the disabled in Jamaica. The President of the Portmore Self-Help Disability Organization explained that their more than 100 members cannot access many of the buildings in the city, and since a number of the ATMs have no ramps, they must depend on others to assist them. She added that "not even the local planning authority is in a position to help us, as the municipal offices don't have any access for persons with physical disabilities."³³¹ The information received by the Inter-American Commission indicates that this situation is replicated throughout the country, and is even worse in the cities and towns with fewer financial resources.

314. Another serious problem faced by the disabled is access to HIV and AIDS prevention information and services, made more difficult by the lack of data and proper assessment of this situation. According to the Jamaica Council on Disabilities, there has been an increase in disabled persons becoming infected with HIV, but even when they are sick, they do not get tested for HIV.³³²

315. During its visit to Jamaica, the IACHR received information about the situation of persons with mental disabilities in that country, notably the lack of adequate, specialized facilities for the care and protection of this population, and acts of violence and discrimination committed against them. In particular, during its visit to Spanish Town, the Inter-American Commission was informed that there are roughly 10,000 mentally disabled persons living in St. Catherine, without access to a specialized facility for their care and protection. Further, the Inter-American Commission received information about acts of deadly violence perpetrated against persons with mental disabilities, some of whom live on the streets.

316. The IACHR was especially distressed to learn about the treatment of elderly residents of the Golden Age Home, an infirmary for elderly indigent and disabled Jamaicans, which is run as a private sector entity in partnership with the Government of Jamaica.³³³ The information gathered in a 2011 undercover journalistic investigation found

³³¹ Panos, "Losing count: the disabled lost in Jamaica's HIV response", Carol Williams, available at: http://www.panosaid.org/2010/Left_read.asp?leftStoryId=58&leftSectionId=8. The National HIV/STI Program in Jamaica has allocated money from the Global Fund to finance projects for education on HIV and AIDS with some organizations that work closely with disabled persons. UNAIDS has developed a program to empower hearing impaired women by educating them about HIV, and the Government of Jamaica has carried out a program with the European Community and the United Nations Population Fund sexual and reproductive health program, which targets the disabled.

³³² Jamaica Star, "More Access Needed for the Disabled", April 17, 2010, available at: <http://jamaica-star.com/thestar/20100417/news/news6.html>.

³³³ The Golden Age Home was set up to replace an institution named Eventide, which had burned down in May 1980, resulting in the death of some 144 elderly indigent women residents, most of whom were indigent and blind. The report published by the Sub-Committee of the Board of the Golden Age Home in response to the April 2011 journalistic investigation explains the following:

Based on the past experience of the Eventide home as a totally Government run institution, lacking the involvement and limited participation of the general public, through the chief conceptualizer, it was decided that a company limited by Guarantee, not having a share capital, be established. Through this medium it was expected that the Home would operate

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that many of the elderly residents were subjected to a mass bathing ritual each morning, where male and female residents together were sprayed with water from a hose, after which they were forced to walk back to their rooms naked.³³⁴ Residents at the infirmary spent most of their days wallowing on dirty floors, and a severely disabled woman was found tied to a bed. The account further indicates that despite the well kept yards of the infirmary, at least one of the dormitories had a strong odor of feces mixed with urine, and that flies were everywhere, on the residents, and on their food.³³⁵ The Inter-American Commission urges the Jamaican State to take all measures necessary in order to guarantee the rights to humane treatment, personal dignity and to equal protection to all persons with disabilities, including the residents of the Golden Age Home and similar institutions.

317. While visiting police station lock-ups in Spanish Town and the St. Catherine's prison facility, the IACHR documented at least 4 mentally disabled persons being held in the police station lock-ups. The United Nations Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment visited Jamaica in February 2010. At the end of his visit, he issued a press release with preliminary findings which stated:

Persons with mental disabilities, suspected or convicted of a crime, are not held in a separate psychiatric institution. Rather, they are detained in special wings of correctional centres. In the case of police stations, they are held together with other detainees. The conditions in which these particularly vulnerable persons are held, together with a lack of adequate medical attention, are damaging to their physical and mental health. Persons suffering from a severe mental illness need placement in a secure psychiatric institution.³³⁶

318. Legislation to protect the rights of Jamaica's disabled community has been under draft for many years in Jamaica, but it had not yet been considered by Parliament by the date of adoption of this report. According to the Minister of Labor and Social Services, the reason for the delay is that the bill is "being approached carefully, seeking the full participation of members of the disabled community, as well as the

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like a private sector entity in partnership with the Government with a Board and Management put in place to govern and maintain operations.

Report of the Subcommittee of the Board of the Golden Age Home. Available at: <http://www.localgovjamaica.gov.jm/Files/Media/file/content/GAH%20Subcommittee%20Findings.pdf>. In this report, the Board expressed its "deep concern" with the situation and the "breakdown in management and supervision" which they admitted was due to a "failing of oversight".

³³⁴ Jamaica Gleaner, "Disgraceful - Disabled residents at The Golden-Age Home ill-treated, tied up, neglected", April 3, 2011, available at: <http://jamaica-gleaner.com/gleaner/20110403/lead/lead1.html>.

³³⁵ Jamaica Gleaner, "Disgraceful - Disabled residents at The Golden-Age Home ill-treated, tied up, neglected", April 3, 2011, available at: <http://jamaica-gleaner.com/gleaner/20110403/lead/lead1.html>.

³³⁶ United Nations, UN Special Rapporteur presents preliminary findings on his mission to Jamaica, Press Release, February 19, 2010.

numerous government ministries, agencies and departments which will, of necessity, be required to play a vital role in the implementation of the new provisions."³³⁷

319. The Inter-American Commission recommends to the State of Jamaica that it take the following measures:

- a. Adopt specific legislation, policies and practices, to ensure that all persons living with disabilities enjoy their rights free of any form of discrimination.
- b. Strengthen training for policy makers, and those within the Ministries of Health, Education, and Labor at all levels, on issues around the rights and needs of persons with disabilities.
- c. Adopt laws and policies establishing a right to education for children with disabilities and programs in order to ensure access to education (and if necessary, an appropriate, specialized education).
- d. Train civil servants within the judiciary and the police force on international as well as domestic obligations to uphold the rights of persons with disabilities.
- e. Train police specifically to be able to respond appropriately and respectfully in every interaction with a person with a disability.
- f. Ensure that persons with disabilities receive the services and housing they require to prevent damage to their physical or mental well-being.
- g. Adopt the measures necessary, including the designation of funding and working with the private sector, to ensure that facilities and services throughout the country are available to persons with disabilities.
- h. Establish and/or strengthen the availability of medical and other required services for persons with physical or mental disabilities who do not live in the principal urban areas.

³³⁷ Jamaica Observer, "Disabilities bill crawls toward enactment", Alicia Dunkley, May 29, 2011, available at: http://www.jamaicaobserver.com/news/Disabilities-bill-crawls-towards-enactment_8905128#ixzz1gFGdeF2k.

CHAPTER IX THE RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION

320. The present chapter describes some of the most relevant recent issues related to the situation of the right to freedom of expression in Jamaica and formulates viable recommendations based on the American Convention, the American Declaration, and the IACHR's Declaration of Principles on Freedom of Expression ("Declaration of Principles").³³⁸

321. Freedom of expression is essential for the development and strengthening of democracy and for the full exercise of human rights. The recognition of freedom of expression is a fundamental guarantee to ensure the rule of law and democratic institutions. The Inter-American Court has repeatedly emphasized the importance of this right by affirming that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.³³⁹

322. Freedom of expression includes the right of every person to seek, receive, and disseminate information and ideas of any kind. In this respect, this right has two dimensions, individual as well as social. This dual nature:

requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.³⁴⁰

323. The Jamaican Constitution recognizes the State's obligation to protect and guarantee the right to freedom of expression, stating, *inter alia*, that "[e]xcept with his

³³⁸ The IACHR approved the Declaration of Principles on Freedom of Expression during its 108th Ordinary Period of Sessions in October of 2000. IACHR. Declaration of Principles on Freedom of Expression, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>.

³³⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

³⁴⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30.

own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.”³⁴¹

324. Though it can be stated that in general terms freedom of expression is protected in Jamaica both in law and practice, in this chapter the IACHR will address two issues of continuing relevance and concern: defamation laws and access to information. The State has made important progress in recent years with regard to both issues, though work remains to be done in order to bring Jamaica into full compliance with the freedom of expression standards of the inter-American human rights system.

A. Defamation laws

325. At the conclusion of its on-site visit to Jamaica, the Inter-American Commission stated that it had held meetings with:

media directors, journalists and officials of the Media Association of Jamaica and the Press Association of Jamaica, where it received information on issues related to legal standards that affect the exercise of the right of freedom of expression. In this regard, the Commission received information on legislative changes that have been recommended by a government-created task force and wishes to emphasize the importance of ensuring that the recommendations of this report receive expeditious consideration by the Parliament.³⁴²

326. Indeed, the Inter-American Commission observes that in recent years ongoing discussions have taken place in Jamaica regarding the need to reform the country’s defamation laws. In its 2010 Annual Report, for example, the IACHR’s Office of the Special Rapporteur for Freedom of Expression expressed the following:

The Office of the Special Rapporteur views positively the efforts of the Government of Jamaica, begun in 2007, to review and modify its laws on defamation. However, according to the information received, although the competent commission has met on several occasions in 2010 to discuss the recommendations, the project has not moved forward. In this same sense, the Office of the Special Rapporteur has received information indicating that Jamaica’s media outlets have been lobbying for the Parliament to complete the review of these laws, indicating that current rules are very costly and that the risk of being subjected to the

³⁴¹ Constitution of Jamaica, section 22(1), available at: [http://www.moi.gov.jm/laws/subsidiary/Constitution%20of%20Jamaica%20\(bACK-UP\).pdf](http://www.moi.gov.jm/laws/subsidiary/Constitution%20of%20Jamaica%20(bACK-UP).pdf).

³⁴² IACHR, Preliminary Observations on the Commission’s Visit to Jamaica, December 5, 2008, available at: <http://www.cidh.oas.org/Comunicados/English/2008/59.08eng.htm>.

high costs of damages often leads them to exclude potentially contentious news items. For this and other reasons, the laws are a true obstacle to the media's function as democracy's watchdog.³⁴³

327. The IACHR recalls that, according to the terms of the American Convention, freedom of expression is not an absolute right.³⁴⁴ Article 13 of the American Convention provides expressly --in paragraphs 2, 4 and 5-- that freedom of expression can be subject to certain limitations, and establishes the general framework of the conditions required for such limitations to be legitimate.³⁴⁵ The general rule is set forth in paragraph 2, according to which "[t]he exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals."

328. The Inter-American Commission and Court, in interpreting Article 13.2 of the American Convention, have established a series of parameters for the permissible imposition of subsequent liability. The IACHR has repeatedly called on States, for example, not to criminalize the exercise of freedom of speech, especially with regard to matters of public interest.³⁴⁶ Sanctions of a civil nature may be imposed when necessary to meet one of the abovementioned legitimate objectives recognized in article 13.2 of the Convention. Here too, however, the inter-American system has developed a series of standards with which civil sanctions in the area of freedom of expression must comply. First, as the Inter-American Court has held, opinions cannot be considered either true or false; therefore,

³⁴³ IACHR, Annual Report 2010, OAS/Ser.L/V/II.Doc.5, March 4, 2011, Report of the Office of the Special Rapporteur for Freedom of Expression, chap. II, para. 334. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf.

³⁴⁴ I/A Court H. R., *Case Kimel V. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 54; I/A Court H. R., *Case of Palamara-Iribarne V. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 79; I/A Court H. R., *Case of Herrera-Ulloa V. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H. R., *Case of Tristán Donoso V. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 110; I/A Court H. R., *Case of Ríos et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 106; I/A Court H. R., *Case of Perozo et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 117; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

³⁴⁵ I/A Court H. R., *Case of Herrera-Ulloa V. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 35; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 55; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese V. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese V. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.a).

³⁴⁶ IACHR, Office of the Special Rapporteur for Freedom of Expression, A Hemispheric Agenda for the Defense of Freedom of Expression. OAS/Ser.L/v/II/IACHR/RELE/INF.4/09, February 25, 2009, para. 56. Available at: http://www.cidh.org/pdf_files/RELEHemisphericAgenda.pdf

opinion cannot be the object of sanction.³⁴⁷ Likewise, heightened standards should exist to assess the subsequent liability of those who disseminate information on matters of public interest or political criticism, including the standard of “actual malice,” and the strict proportionality and reasonableness of sanctions.³⁴⁸ In this regard, the IACHR’s Declaration of Principles on Freedom of Expression establishes that:

The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.³⁴⁹

Finally, journalists who investigate cases of corruption or improper conduct should not be subject to judicial prosecution or other type of harassment in reprisal for their work.³⁵⁰

329. It should be recalled that, as the Inter-American Court has observed, fear of civil punishment can be equally or more intimidating and inhibiting to the exercise of freedom of expression than criminal punishment, and clearly leads to the harmful outcome of self-censorship, both for the affected party and for other potential critics.³⁵¹

330. With these standards in mind, the Inter-American Commission will briefly examine the current state of Jamaica’s defamation laws as well as the ongoing processes aimed at reforming these laws.

331. The law of defamation in Jamaica has both statutory and common law bases. The statutory basis consists of The Libel and Slander Act, originally acted in 1851, and The Defamation Act enacted in 1961, with their subsequent amendments. The English common law of defamation was applied in Jamaica from shortly after it became a colony in 1655, and Jamaican courts have over the years further developed the common law in this area.³⁵²

³⁴⁷ I/A Court H.R., *Case of Usón Ramírez V. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 86.

³⁴⁸ IACHR, Annual Report 2007, OAS/Ser.L/V/II.130, December 29, 2007. Vol. II, Report of the Office of the Special Rapporteur for Freedom of Expression, chap. VII, par. 7. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II.ENG.pdf

³⁴⁹ IACHR, Declaration of Principles on Freedom of Expression, Principle 10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>.

³⁵⁰ Joint Declaration of the Rapporteurs for Freedom of Expression of the UN, OSCE and IACHR, 2003. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&IID=1>

³⁵¹ I/A Court H.R., *Case of Tristán Donoso V. Panama*, Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 129.

³⁵² Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 9, available at: [Continues...](#)

332. Criminal libel remains an offense in Jamaica, inherited from an English tradition originally designed to protect the nobility from criticism and to place limits on political debate.³⁵³ Articles 5 and 6 of the Libel and Slander Act contemplate prison terms of up to one year for persons who “maliciously publish any defamatory libel,” and prison terms of up to two years for persons who “maliciously publish any defamatory libel, knowing the same to be false.”³⁵⁴ In such proceedings, the truth of the matter published does not amount to a defense, “unless it was for the public benefit that the said matters charged should be published.”³⁵⁵ Notwithstanding the continued existence of these provisions, the Inter-American Commission understands --based on the information it has received --that prosecutions for criminal libel have not taken place in Jamaica for many years.

333. Civil actions for defamation (libel and slander), on the other hand, do regularly take place in Jamaica. To be actionable under Jamaican defamation law, a publication must involve an imputation against the reputation of another person; that is, it must tend to “lower the plaintiff in the estimation of right-thinking members of society generally” or “to expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession or his financial credit.”³⁵⁶ Jamaican law presumes that all defamatory statements are false. The person defamed does not have to prove the falsehood of what was said, though the person who published the defamatory statement may prove that the statement was true.³⁵⁷ It does not matter, for purposes of the application of defamation law, whether the defamation was intentional or the result of negligence.³⁵⁸

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<http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>

³⁵³ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 22, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁵⁴ The Libel and Slander Act, Arts. 5 and 6, available at: <http://www.moj.gov.jm/laws/statutes/Libel%20and%20Slander%20Act.pdf>.

³⁵⁵ The Libel and Slander Act, Art. 7, available at: <http://www.moj.gov.jm/laws/statutes/Libel%20and%20Slander%20Act.pdf>. See also, Small Committee Report, p. 22.

³⁵⁶ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 10, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁵⁷ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 10, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁵⁸ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 10, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

334. Persons accused of defamation under Jamaican law may rely on defenses of “justification”³⁵⁹ or “fair comment.”³⁶⁰ According to the “fair comment” defense, it is a defense to establish that the publication constituted a comment on a matter of public interest already in the public domain, and was not an assertion of fact. The comment must be made in good faith without malice.³⁶¹

335. Jamaican law also recognizes two types of privilege --absolute privilege and qualified privilege-- that are designed to protect certain types of speech that are in the public interest.³⁶² Absolute privilege offers a complete defense to people with a public duty to speak out. For example, members of the House of Representatives and the Senate may speak freely in Parliament, while judges, attorneys and witnesses cannot be sued for what they say in court, and public officials are not liable for certain reports about matters of state.³⁶³ Qualified privilege protects statements made in the public interest, provided the person has practiced “responsible journalism.”³⁶⁴ Both Jamaican courts and the Privy Council have applied the concept of “responsible journalism” developed by the United Kingdom House of Lords in the case of *Reynolds v. Times Newspapers*.³⁶⁵

³⁵⁹ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 10, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>. See also, The Defamation Act, art. 7, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/04.-Defamation-Act.pdf>. *Black’s Law Dictionary* defines “justification” as a “[j]ust, lawful excuse or reason for act or failing to act. A maintaining or showing a sufficient reason in court why the defendant did what he is called upon to answer, particularly in an action of libel and as a defense to criminal charges of assault or homicide (e.g. self defense).” *Black’s Law Dictionary*, Sixth Edition, 1990.

³⁶⁰ See Small Committee Report, p. 10. See also, The Defamation Act, art. 8, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/04.-Defamation-Act.pdf>.

³⁶¹ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 10, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁶² Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 11, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁶³ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 11, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁶⁴ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 11, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁶⁵ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 11, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>, citing the cases of *Abrahams v. Gleaner Company*, *Bonnick v. Morris* and *Harper v. Seaga*. In *Reynolds v. Times Newspapers Ltd. and Others* [1999] UKHL Continues...

336. In his inaugural address on September 11, 2007, then Prime Minister Bruce Golding pledged to “review the libel and slander law to ensure that it cannot be used as a firewall to protect wrongdoers.”³⁶⁶ Shortly thereafter, he appointed a committee to be chaired by Justice Hugh Small. The Small Committee included prominent members of the Jamaican legal and media communities, and it was established to “review the law of defamation and to make recommendations for changes that will ensure transparency and accountability in the context of a new framework of good governance.”³⁶⁷ On February 29, 2008, the Small Committee delivered its report and recommendations.

337. The Small Committee’s report was then taken up by a Joint Select Committee of Parliament, which was established in July 2008 to consider and report on the Small Committee’s recommendations. In December 2010, the Joint Select Committee delivered its report.³⁶⁸ The Joint Select Committee accepted a number of the Small Committee’s recommendations for reform; these included: 1) abolishing the distinction between slander and libel; 2) reducing the statute of limitations for defamation actions to two years; 3) replacing the defense of “justification” with the defense of truth; 4) creating a defense of an “offer of amends”; 5) establishing that the publication of an apology should not be construed as an admission of liability; 6) creating a defense of “innocent dissemination”; 7) creating the remedy of a declaratory order; 8) creating the remedy of a correction order; 9) establishing that judges (rather than juries) should determine damages awards in defamation suits; and 10) abolishing the common law offense of criminal libel.³⁶⁹

338. On the other hand, the Joint Select Committee also declined to endorse some of the Small Committee’s proposals, such as the creation of a defense of triviality,

...continuation

45, the House of Lords rejected a general “political information” category of privilege, and held that in assessing claims of privilege a court should take into account a variety of factors, including: 1) the seriousness of the allegation; 2) the nature of the information, and the extent to which the subject-matter is a matter of public concern; 3) the source of the information; 4) the steps taken to verify the information; 5) the status of the information; 6) the urgency of the matter; 7) whether comment was sought from the plaintiff; 8) whether the article contained the gist of the plaintiff’s side of the story; 9) the tone of the article; and 10) the circumstances of the publication, including the timing.

³⁶⁶ Inaugural address of Hon. Bruce Golding, Prime Minister of Jamaica, September 11, 2007, available at: <http://www.jis.gov.jm/news/120/12966?mode=redirect>

³⁶⁷ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, p. 1, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁶⁸ Report of the Joint Select Committee to Consider and Report on the Report on the Review of Jamaica’s Defamation Law, December 2010, available at: http://www.japarliament.gov.jm/attachments/540_Report%20of%20the%20Joint%20Select%20Committee%20To%20Consider%20and%20Report%20on%20the%20Report%20on%20the%20Review%20of%20Jamaica's%20Defamation%20Law.pdf

³⁶⁹ Report of the Joint Select Committee to Consider and Report on the Report on the Review of Jamaica’s Defamation Law, December 2010, pp. 4-11, available at: http://www.japarliament.gov.jm/attachments/540_Report%20of%20the%20Joint%20Select%20Committee%20To%20Consider%20and%20Report%20on%20the%20Report%20on%20the%20Review%20of%20Jamaica's%20Defamation%20Law.pdf

which was rejected on the grounds that triviality should go to damages rather than whether or not a person has been defamed.³⁷⁰ It also rejected a cap on damages in defamation cases, a proposal that was discussed (though not put forward) by the Small Committee.³⁷¹

339. Finally, the Joint Select Committee considered three different standards for analyzing cases of alleged defamation of public officials. The Small Committee had discussed three standards without reaching agreement on a recommendation; the three proposals considered were: 1) adopting the *New York Times v. Sullivan*³⁷² standard, in which public figures must prove “actual malice” to succeed in a defamation suit; 2) requiring public persons suing for defamation to prove that in addition to speech being defamatory, it was also false; and 3) maintaining the *Reynolds* approach as adopted by Jamaican courts.³⁷³ Of these three approaches, the Joint Select Committee chose to endorse the third option, which would essentially leave Jamaican law unchanged with regard to the standard applicable to public figures who sue for defamation.³⁷⁴

340. The Joint Select Committee Report was approved by the House of Representatives on January 25, 2011, and by the Senate on April 8, 2011, following which the Report was sent to the Chief Parliamentary Counsel for the bill to be prepared.³⁷⁵ According to the information received, on November 22, 2011, a bill titled “An Act to Repeal the Defamation Act and the Libel and Slander Act”, based on the Joint Select

³⁷⁰ Report of the Joint Select Committee to Consider and Report on the Report on the Review of Jamaica’s Defamation Law, December 2010, p. 6, available at: http://www.japarliament.gov.jm/attachments/540_Report%20of%20the%20Joint%20Select%20Committee%20To%20Consider%20and%20Report%20on%20the%20Report%20on%20the%20Review%20of%20Jamaica's%20Defamation%20Law.pdf

³⁷¹ Report of the Joint Select Committee to Consider and Report on the Report on the Review of Jamaica’s Defamation Law, December 2010, pp. 10-11, available at: http://www.japarliament.gov.jm/attachments/540_Report%20of%20the%20Joint%20Select%20Committee%20To%20Consider%20and%20Report%20on%20the%20Report%20on%20the%20Review%20of%20Jamaica's%20Defamation%20Law.pdf

³⁷² The standard takes its name from the decision of the United States Supreme Court in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

³⁷³ ³⁷³ Committee Chaired by Justice Hugh Small, “Report to the Hon. Bruce Golding, Prime Minister, on the Review of Jamaica’s Defamation Laws,” February 29, 2008, pp. 27-35, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/03.-Justice-Hugh-Small-Chaired-Committee-Report-on-Review-of-Defamation-Laws-for-Hon-Bruce-Goldin.pdf>.

³⁷⁴ Report of the Joint Select Committee to Consider and Report on the Report on the Review of Jamaica’s Defamation Law, December 2010, p. 10, available at: http://www.japarliament.gov.jm/attachments/540_Report%20of%20the%20Joint%20Select%20Committee%20To%20Consider%20and%20Report%20on%20the%20Report%20on%20the%20Review%20of%20Jamaica's%20Defamation%20Law.pdf

³⁷⁵ Jamaica Information Service, “House approves committee report on libel laws”, January 27, 2011, available at: <http://www.iis.gov.jm/news/122-parliament/26623-house-approves-committee-report-on-libel-laws>. Jamaica Information Service, “Senate approves committee report on review of libel laws,” April 11, 2011, available at: <http://www.80gigs.com/news/hl.s1/27371>

Committee Report, was tabled in the House of Representatives³⁷⁶. At the time this report went to press, the bill had yet to become law.

341. The IACHR applauds the seriousness with which the Jamaican Parliament has undertaken the task of reviewing its defamation laws, and once again urges Parliament to move swiftly to adopt the required legal reforms in this area. The Inter-American Commission especially notes the active and continuous participation of national and international legal experts and the Jamaican media community in the discussion process. It also believes that many of the reforms accepted by the Joint Select Committee would, if they were to become law, strengthen the protection of freedom of expression in Jamaica and further incorporate inter-American standards in this area into Jamaican law. The IACHR highlights in particular the proposal to abolish criminal libel, as well as the various proposals aimed at promoting proportionate civil damages awards in defamation cases. In this regard, the Inter-American Commission notes that Jamaican public officials --including the Prime Minister-- as well as the Jamaican Media and Press Associations have called attention to the size of damages awards in defamation cases, which in some instances have far outstripped similar awards for wrongful injury or even death.³⁷⁷

342. Notwithstanding this notable progress, the Inter-American Commission remains concerned that the lengthy discussion regarding potential reforms to Jamaica's defamation laws has not produced a recommendation to apply a greater level of protection to speech about matters of public interest. As mentioned, the Joint Select Committee chose in this regard to maintain the *Reynolds* test currently employed by Jamaican courts, the least speech-protective of the standards discussed by the Small Committee. The IACHR sees fit to recall, in this regard, the Inter-American Court's observation that:

it is logical and appropriate that statements concerning public officials and other individuals who exercise functions of a public nature should be accorded, in the terms of Article 13(2) of the Convention, a certain latitude in the broad debate on matters of public interest that is essential for the functioning of a truly democratic system. The foregoing considerations do not, by any means, signify that the honor of public officials or public figures should not be legally protected, but that it

³⁷⁶ Jamaica Gleaner, "New Libel Bill Tabled in House", November 24, 2011, available at: <http://jamaica-gleaner.com/gleaner/20111124/lead/lead5.html>. Carib101.com, "New libel bill tabled in House", November 24, 2011, available at: <http://caribflyer.com/carib/new-libel-bill-tabled-in-house/>.

³⁷⁷ See Chantal Raymond, "Reputation Worth More than Life in Jamaica," January 18, 2011, available at: <http://freespeechjamaica.com/reputation-worth-more-than-life-in-jamaica.html>, quoting then Prime Minister Bruce Golding as stating in a Parliamentary debate, "I have really agonized about ... how to rationalize that John Brown wins a libel suit and the Court awards him \$40 million because his reputation has been harmed, but Agana Barrett is allowed to die in the most inhumane condition. What the system says is that his life is worth \$2 million." See also Media Association of Jamaica and Press Association of Jamaica, "Presentation to the Joint Select Committee to consider and report on the review of Jamaica's defamation laws," June 22, 2009, available at: <http://pressassociationjamaica.org/wp-content/uploads/2010/08/02.-Submission-to-Joint-Select-Committee-MAJ-PAJ-Defamation-Laws.pdf>.

should be protected in accordance with the principles of democratic pluralism.

A different threshold of protection should be applied, which is not based on the nature of the subject, but on the characteristic of public interest inherent in the activities or acts of a specific individual. Those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate.³⁷⁸

343. Heightened protection for speech about matters of public interest is particularly important for fostering democratic accountability and transparency in government actions. As the Inter-American Court has further held:

The democratic control exercised through public opinion encourages the transparency of State actions and promotes the responsibility of public officials in the performance of their duties. Hence, the greater tolerance to the statements and opinions expressed by individuals in the exercise of such democratic power. These are the requirements of the pluralism inherent in a democratic society, which requires the greatest possible flow of information and opinions on issues of public interest.³⁷⁹

344. The consolidated jurisprudence of the inter-American system, therefore, holds that “there should be a reduced margin for any restriction on political debates or on debates on matters of public interest.”³⁸⁰ In this respect, the IACHR again recalls its Declaration of Principles on Freedom of Expression, which establishes that:

in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest [...] it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.³⁸¹

³⁷⁸ I/A Court H.R., *Case of Herrera-Ulloa V. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, paras. 128-129.

³⁷⁹ I/A Court H.R., *Case of Kimel V. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 87. I/A Court H.R., *Case of Herrera-Ulloa V. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 127.

³⁸⁰ I/A Court H.R., *Case of Herrera-Ulloa V. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 127.

³⁸¹ IACHR, Declaration of Principles on Freedom of Expression, Principle 10, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>

The Inter-American Commission observes that the Reynolds “responsible journalism” test currently employed by Jamaican courts falls significantly short of this standard, and is therefore inconsistent with Jamaica’s freedom of expression obligations under the American Convention on Human Rights. The IACHR therefore strongly encourages the Jamaican State to complement the many important reforms proposed to its defamation laws by also strengthening the protection of speech about matters in the public interest, in accordance with inter-American legal standards in this area.

B. Access to Information

345. Jamaica inherited a tradition of government secrecy from the British, the most obvious manifestation of which is the Official Secrets Act of 1911, which remains in force.³⁸² In recent years, however, Jamaica has made important progress in recognizing the right to access to public information, in accordance with its obligations under article 13 of the American Convention. In particular, Jamaica enacted the Access to Information Act (“ATI Act”) in 2002, a piece of legislation that entered into force in 2004. Jamaica has also created important enforcement mechanisms, including the Access to Information Unit³⁸³ and a special Appeal Tribunal to adjudicate access to information controversies.³⁸⁴

346. The ATI Act grants a general right of access to official documents held by public authorities, subject only to the exemptions established in the statute.³⁸⁵ Section 3 of the law defines an official document as one held by a public authority in connection with its functions as such, whether or not it was created by that authority or before the Access to Information Act took effect.

347. The ATI Act specifically applies to all public authorities, including those companies in which the State holds more than 50% of shares, and any other entity that provides services of a public nature which are essential to the welfare of society (subject to an affirmative resolution by the Minister responsible for the document).³⁸⁶ The Act does not apply, however, to the Governor-General, in the exercise of the powers conferred on him by the Constitution of Jamaica or under any other law; the judicial functions of a court or the holder of a judicial office or other office connected with a court; the security or intelligence services in relation to their strategic or operational intelligence-gathering

³⁸² See “Report of the Joint Select Committee to Consider and Report on the Operation of ‘The Access to Information Act, 2002’ Relative to the Review of the Legislation as Provided by the Act” (2011), section 2.13, available at: http://www.ati.gov.jm/pdf/Report_Appendices_Joint_Select_Committee_ATI_Act.pdf, noting however that the United Kingdom itself repealed the 1911 Official Secrets Act in 1989.

³⁸³ Access to Information Unit. Available at: <http://www.ati.gov.jm/index.html>

³⁸⁴ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moi.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>.

³⁸⁵ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moi.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Sections 1(2) and 6(1).

³⁸⁶ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moi.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Sections 3 and 5.

activities; and any entity as the Minister may specify by order subject to affirmative resolution.³⁸⁷ The ATI Act also exempts certain documents from disclosure, including deliberations of the Cabinet and documents whose disclosure “would prejudice the security, defence or international relations of Jamaica.”³⁸⁸

348. The IACHR applauds the fact that the Access to Information Act incorporates into Jamaican law many of the Inter-American system’s relevant standards, such as the principle of disclosure³⁸⁹ and the principle that all public information should be accessible, subject only to a limited regime of exceptions.³⁹⁰

349. However, the Inter-American Commission notes that some of these exceptions are phrased in rather broad terms, and thus it falls to the enforcement authority to define the scope of the exceptions in accordance with international standards in this area. Nor is provision made to balance the public interest in disclosure against the government interest in secrecy in the case of exempted documents. Finally, the Inter-American Commission calls attention to the fact that certain government entities are wholly or partially exempted from the Act, including “the security or intelligence services in relation to their strategic or operational intelligence-gathering activities.”³⁹¹ The IACHR recalls that limitations on the right to seek, receive and impart information must be prescribed by law expressly and in advance, and that they must be sufficiently clear and specific so as not to grant an excessive degree of discretion to the public officials who decide whether or not to disclose the information.³⁹² In addition, while Article 13.2 of the

³⁸⁷ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moj.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Section 5.6.

³⁸⁸ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moj.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Sections 14-23. Exempt documents include: those documents whose disclosure would prejudice security, defense, or international relations (Section 14); documents created for the consideration of the Cabinet (Section 15); documents relating to law enforcement if their disclosure could endanger any person's life or safety (Section 16); documents that would be privileged on the ground of legal professional privilege (Section 17); information that could have a substantial adverse effect on the national economy if disclosed prematurely (Section 18); documents that reveal the government's deliberative process (Section 19); information related to trade secrets (Section 20); information that could result in the destruction of, damage to, or interference with, the conservation of any historical or archaeological sites (Section 21); and documents that contain information that affects personal privacy (Section 22).

³⁸⁹ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case Claude-Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.c)

³⁹⁰ IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework Regarding the Right to Access to Information. OEA/Ser.L/V/II CIDH/RELE/INF. 1/09. December 30, 2009, para. 9. Available at: <http://www.cidh.org/pdf%20files/Access%20to%20information.pdf>

³⁹¹ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moj.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Sections 5(6) and 5(8). “Security or intelligence service” refers to the Jamaica Constabulary Force, the Island Special Constabulary Force, the Rural Police, and the Jamaica Defense Force.

³⁹² IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework Regarding the Right to Access to Information, OEA/Ser.L/V/II CIDH/RELE/INF. 1/09, December 30, 2009, para. 49. Available at: <http://www.cidh.org/pdf%20files/Access%20to%20information.pdf>. See also IACHR, Continues...

American Convention establishes that the right to access to information, like the right to freedom of expression, can be restricted when necessary to protect certain compelling government interests, the strict necessity and proportionality of such restrictions should be analyzed on a case-by-case basis.³⁹³

350. In addition to establishing the scope of the right to access to information in Jamaica, the ATI Act establishes the procedures whereby citizens can request public information. Requests for information are initially made to the public authority which holds the document, and may be made in writing, by telephone, or by other electronic means. The Act establishes that requests for information must generally be addressed within 30 days, and negative responses must state the reasons for refusal and indicate the options available to the applicant.³⁹⁴

351. The Act also provides the possibility of applying for an administrative review of those decisions by the public authority to: (a) refuse to grant access to the document; (b) grant access only to some of the documents specified in an application; (c) defer the grant of access to the document; or (d) charge a fee for action taken or as to the amount of the fee. The decision in this review is taken by a different, and more senior, official than the one who issued the response, and the request for review must be made within a 30-day period from the time the applicant is notified of the relevant decision.³⁹⁵ The Act further establishes a specialized Appeal Tribunal to which citizens may appeal after exhausting the internal review mechanism or if a decision on the review of their application has not been decided in the specified period of time.³⁹⁶ The Appeal Tribunal has been in operation since 2004 and has thus far issued eight decisions, all of them granting access to most of the information requested.³⁹⁷

352. The Inter-American Commission observes that the access to information procedures established in the ATI Act generally comply with the State's commitments under the American Convention, including the obligation to provide a substantive response to requests for information, to establish a simple and accessible mechanism for requesting information that includes time limits for responding to such requests, and to provide for

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Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.f).

³⁹³ IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework Regarding the Right to Access to Information. OEA/Ser.L/V/II CIDH/RELE/INF. 1/09, December 30, 2009, para. 55. Available at: <http://www.cidh.org/pdf%20files/Access%20to%20information.pdf>.

³⁹⁴ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moj.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Section 7.

³⁹⁵ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moj.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Section 30.

³⁹⁶ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moj.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Section 32, Second Schedule.

³⁹⁷ Decisions of the Appeal Tribunal may be viewed at: <http://www.ati.gov.jm/tribunal-decisions.html>

administrative and judicial review of decisions to deny access to the information requested.³⁹⁸

353. The IACHR also recognizes Jamaica's efforts, as reflected in the Act, to comply with its obligation of active transparency by proactively making public a variety of basic information about the functions of public authorities.³⁹⁹ In this regard, the IACHR also considers it important to mention the work of the Access to Information Unit (hereinafter, "ATI Unit"), established within the Office of the Prime Minister, in spearheading the implementation of the ATI Act and promoting a culture of transparency in Jamaica.⁴⁰⁰ The ATI Unit's functions include: providing guidance and training for government bodies on how to interpret and administer the Act; identifying and addressing difficult or problematic issues arising from implementation of the Act; providing policy recommendations on how best these problems may be addressed; monitoring compliance with the Act and providing guidance and advice for the public and Government Bodies; and educating the public in respect of their rights and obligations under the Act.⁴⁰¹

354. Notwithstanding the important progress that Jamaica has made in the area of access to public information in the past decade, the Inter-American Commission notes a number of practical challenges to fully guaranteeing the exercise of this right, many of which were identified in a recent report by a Joint Select Committee of Parliament on the operation of the ATI Act.⁴⁰² The Joint Select Committee pointed out, for example, that though the Act establishes that requests for information must be answered within 30 days, a time limit that is respected in "most cases", some applicants have had to wait for months in order to receive a response.⁴⁰³ Likewise, the Committee identified "lengthy delays" on

³⁹⁸ IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework Regarding the Right to Access to Information. OEA/Ser.L/V/II CIDH/RELE/INF. 1/09, December 30, 2009, paras. 24-31. Available at: <http://www.cidh.org/pdf%20files/Access%20to%20information.pdf>.

³⁹⁹ The Access to Information Act, 2002. Second Schedule Available at: <http://www.moj.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>, Section 4 and First Schedule. This information includes: (a) a description of the subject area of the public authority; (b) a list of the public authority's departments and agencies, specifying in each case the subjects they handle, their locations, and the hours they are open to the public; (c) the title and business address of the principal officer; (d) a statement of the documents specified in subparagraph (e), which are used by the authority or its officers in making decisions or recommendations; and (f) manuals or other documents containing the public authority's interpretations, rules, guidelines, practices, or precedents, as well as documents containing particulars of schemes administered by the authority with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject.

⁴⁰⁰ See information on ATI Unit at: <http://www.ati.gov.jm/>.

⁴⁰¹ See information on ATI Unit at: <http://www.ati.gov.jm/>. See also "Report of the Joint Select Committee to Consider and Report on the Operation of 'The Access to Information Act, 2002' Relative to the Review of the Legislation as Provided by the Act" (2011), sections 2.11, 2.11.1, available at: http://www.ati.gov.jm/pdf/Report_Appendices_Joint_Select_Committee_ATI_Act.pdf.

⁴⁰² "Report of the Joint Select Committee to Consider and Report on the Operation of 'The Access to Information Act, 2002' Relative to the Review of the Legislation as Provided by the Act" (2011), available at: http://www.ati.gov.jm/pdf/Report_Appendices_Joint_Select_Committee_ATI_Act.pdf.

⁴⁰³ "Report of the Joint Select Committee to Consider and Report on the Operation of 'The Access to Information Act, 2002' Relative to the Review of the Legislation as Provided by the Act" (2011), section 2.6, available at: http://www.ati.gov.jm/pdf/Report_Appendices_Joint_Select_Committee_ATI_Act.pdf.

the part of the Appeal Tribunal in handing down decisions.⁴⁰⁴ The Committee also recommended that the ATI Unit be given statutory authority, in order to strengthen its capacity to ensure that public authorities comply with the Act.⁴⁰⁵ Further, the Committee recommended that the Act be amended to establish a “public interest test” to be applied to the documents exempted from disclosure by the Act.⁴⁰⁶ The IACHR notes that this measure would help address the abovementioned concern regarding the need for a case-by-case analysis of the proportionality of withholding a document. Finally, the Committee recommended repealing and replacing the Official Secrets Act,⁴⁰⁷ echoing a call that has been made by media organizations.⁴⁰⁸ The Inter-American Commission notes the great utility of Parliament’s review of the operation of the ATI Act, and encourages the State to both implement the Committee’s recommendations and continue conducting such periodic reviews in the future.

355. In light of the foregoing considerations, the IACHR recommends that the Jamaican State:

- a. Bring its domestic legislation on defamation into conformity with the parameters established in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression. In particular, it should repeal the crime of criminal libel, at least insofar as it applies to cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in such cases, civil damages should only be awarded if it is proven that in disseminating the news, the defendant had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of the information. Civil damages for defamation should in all cases be proportionate.

⁴⁰⁴ “Report of the Joint Select Committee to Consider and Report on the Operation of ‘The Access to Information Act, 2002’ Relative to the Review of the Legislation as Provided by the Act” (2011), section 2.17.2, available at: http://www.ati.gov.jm/pdf/Report_Appendices_Joint_Select_Committee_ATI_Act.pdf.

⁴⁰⁵ “Report of the Joint Select Committee to Consider and Report on the Operation of ‘The Access to Information Act, 2002’ Relative to the Review of the Legislation as Provided by the Act” (2011), section 2.11.1, available at: http://www.ati.gov.jm/pdf/Report_Appendices_Joint_Select_Committee_ATI_Act.pdf.

⁴⁰⁶ “Report of the Joint Select Committee to Consider and Report on the Operation of ‘The Access to Information Act, 2002’ Relative to the Review of the Legislation as Provided by the Act” (2011), section 2.16, available at: http://www.ati.gov.jm/pdf/Report_Appendices_Joint_Select_Committee_ATI_Act.pdf.

⁴⁰⁷ “Report of the Joint Select Committee to Consider and Report on the Operation of ‘The Access to Information Act, 2002’ Relative to the Review of the Legislation as Provided by the Act” (2011), section 2.13, available at: http://www.ati.gov.jm/pdf/Report_Appendices_Joint_Select_Committee_ATI_Act.pdf.

⁴⁰⁸ Jamaica Gleaner, “US Journalist Bats For Secret Act To Be Abolished – Gleaner Cops Two Fair Play Awards”, September 15, 2010, available at: <http://jamaica-gleaner.com/gleaner/20100915/lead/lead6.html#>; Inter-American Press Association (IAPA). *Country reports: Jamaica 66th General Assembly, November 5-9, 2010*, Merida, Mexico. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=774&idioma=sp

- b. Take swift action to adopt the recommendations of the Joint Select Committee, and require that public figures prove malice, knowledge or gross negligence in order to succeed in a civil defamation action.

- b. Continue to strengthen its access to information laws and procedures by adopting the recommendations of the Joint Select Committee of Parliament to Consider and Report on the Operation of The Access to Information Act, including the recommendation to repeal the Official Secrets Act and provide statutory authority to the Access to Information Unit.