



JAMAICA: TIME FOR STRONGER

POLICE ACCOUNTABILITY

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 36TH SESSION OF THE UPR WORKING GROUP, NOVEMBER 2020

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First published in 2017

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: AMR 38/1717/2019

Original language: English

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CONTENTS

INTRODUCTION	4
FOLLOW UP TO THE PREVIOUS REVIEW	4
THE NATIONAL HUMAN RIGHTS FRAMEWORK	5
HUMAN RIGHTS SITUATION ON THE GROUND	6
UNLAWFUL KILLINGS	6
INTIMIDATION AND HARASSMENT OF VICTIMS' RELATIVES	7
THE SLOW JUSTICE SYSTEM AND LIMITATIONS ON ACCESS TO JUSTICE	7
CHALLENGES TO POLICE OVERSIGHT	8
RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW	10
ANNEX	12

INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Jamaica in November 2020. Originally published in October 2019, it was updated in August 2020 due to the delay in the review caused by the COVID-19 pandemic. In it, Amnesty International evaluates the implementation of recommendations made to Jamaica in its previous UPR, assesses the national human rights framework and the human rights situation on the ground. Amnesty International also presents a number of recommendations to the government of Jamaica to address the human rights challenges mentioned in this report.

Amnesty International raises concerns about unlawful killings by the police, intimidation and harassment of victims' relatives, limitations to access to justice and improvements in police oversight.

Amnesty International is also concerned about widespread and institutionalized discrimination against LGBTI persons and the criminalization of same-sex relations.

FOLLOW UP TO THE PREVIOUS REVIEW

During Jamaica's previous UPR in 2015, it accepted a number of recommendations on a range of issues, including addressing gender-based violence,¹ strengthening child protection,² establishing a National Human Rights Institution,³ increasing access to healthcare,⁴ and continuing its advocacy on global warming.⁵

Jamaica has been vocal in the international community in calling for measures to address the climate crisis. In September 2019, Jamaica signed the Escazú Agreement⁶ but, at the time or writing, has yet to ratify it.

Jamaica considered already in implementation, or have outright rejected, a host of recommendations related to de-criminalizing same-sex relations, strengthening protections for

¹ Report of the Working Group on the Universal Periodic Review, Jamaica, A/HRC/30/15, 20 July 2015, recommendations 118.10 (Colombia); 118.11 (Singapore); 118.12 (Togo); 118.13 (Uruguay); 118.14 (Germany).

² A/HRC/30/15, recommendations 118.16 (South Africa); 118.17 (Sri Lanka).

³ A/HRC/30/15, recommendations 118.2 (Indonesia); and 118.3 (Mauritius); 118.4 (Niger); 118.5 (Nigeria); 118.6 (Philippines); 118.7 (Rwanda); 118.8 (Senegal)

⁴ A/HRC/30/15, recommendation 118.21 (Sri Lanka)

⁵ A/HRC/30/15, recommendation 118.22 (Philippines)

⁶ The Escazú Agreement is a new environmental treaty for Latin America and the Caribbean that aims to guarantee the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters. It is also the first treaty in the world with specific provisions to protect environment defenders.

LGBTI people from violence, and enacting anti-discrimination legislation.⁷ While advances have been reported in the visibility and protection of LGBTI persons due the ongoing efforts of local NGOs,⁸ discrimination towards LGBTI people remains widespread and institutionalized.

Jamaica also considered underway processes to strengthen awareness-raising campaigns to help prevent HIV in people who use drugs, sex workers, and other groups at risk of infection,⁹ and accepted other recommendations to reduce HIV&AIDS.¹⁰ While Jamaica continues to take steps to address the HIV epidemic, it remains concentrated in groups who experience human rights violations resulting from intense stigma and discrimination.¹¹

Despite also being concerned by reports of violence towards children and bullying in school,¹² and the continued lack of a formal moratorium on the death penalty,¹³ Amnesty International has focused this submission on the decade-old challenge of unlawful killings, and other excessive use of force, by law enforcement officials.

In this regard, during its last UPR, Jamaica considered implementation underway of multiple recommendations related to training of the police on human rights,¹⁴ ensuring that use of force is lawful,¹⁵ and taking measures to investigate and prosecute cases of alleged excessive use of force.¹⁶ Additionally, Jamaica considered Australia's recommendation to "[g]ive INDECOM the power it needs to investigate criminal acts by the Police,"¹⁷ already in the process of implementation and offered its support.

Amnesty International accepts that some of these recommendations are underway but maintains that the state has failed so far to fully condemn ongoing police killings at the highest levels of government.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

While accepting multiple recommendations to expedite the establishment of a National Human Rights Institution,¹⁸ at the time of writing, no such mechanism has been established.

⁷ A/HRC/30/15, recommendations 119.20 (Canada); 119.21 (Netherlands); 121.29 (Uruguay); 121.30 (Argentina); 121.31 (Chile); 121.32 (United States of America); 121.33 (Germany); 121.34 (Italy); 121.35 (Brazil); 121.36 (Montenegro); 121.37 (Norway); 121.38 (Slovenia); 121.39 (Slovenia); 121.40 (Slovenia); 121.41 (Spain)

⁸ The Guardian, Welcome to Jamaica – no longer 'the most homophobic place on Earth', 6 December 2018

⁹ A/HRC/30/15, recommendation 119.54 (Mexico)

¹⁰ A/HRC/30/15, recommendation 118.1 (Trinidad); 119.55 (Cuba); 119.56 (Morocco); 121.35 (Brazil); 121.56 (Norway);

¹¹ According to UNAIDS, as of 2018, HIV prevalence was almost 30% in men who have sex with men, and 51% in transgender people. See, UNAIDS, Country Fact-Sheet, available at: <https://www.unaids.org/en/regionscountries/countries/jamaica>

¹² See for example, UNICEF, Situation Analysis of Jamaican Children – 2018, available at: https://www.unicef.org/jamaica/UNICEF_20180618_SituationAnalysis_web.pdf

¹³ Amnesty International, Death Sentences and Executions 2018, (ACT 50/9870/2019)

¹⁴ A/HRC/30/15, recommendations 119.5 (Egypt); 119.6 (Senegal); 119.14 (Colombia).

¹⁵ A/HRC/30/15, recommendation 19.22 (Thailand).

¹⁶ A/HRC/30/15, recommendations 119.23 (Mexico); 119.25 (United States of America).

¹⁷ A/HRC/30/15, recommendations 119.46 (Australia).

¹⁸ A/HRC/30/15, recommendations 118.2 (Indonesia); and 118.3 (Mauritius); 118.4 (Niger); 118.5 (Nigeria); 118.6 (Philippines); 118.7 (Rwanda); 118.8 (Senegal).

Despite many recommendations for Jamaica to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁹ five years later Jamaica has not moved to ratify this important treaty to combat torture and ill-treatment. Other key human rights treaties have also not been ratified.

Jamaica continues to criminalize same-sex relations and lacks comprehensive anti-discrimination legislation, despite multiple reports over the years that document the violence and hatred to which LGBTI people are exposed.²⁰

HUMAN RIGHTS SITUATION ON THE GROUND

Killings by the police continued to be an alarming human rights issue during the period under review. First-hand research carried out by Amnesty International in 2016,²¹ sets out the range of concerns held by the organization and includes a number of recommendations for action by the state.

UNLAWFUL KILLINGS

Killings by the police is a decades old human rights concern in Jamaica. Since Jamaica's last UPR, between 2015 and 2018, over 500 people were fatally shot by the police in Jamaica, and over 300 shot and injured, according to data from INDECOM (Independent Commission of Investigations), an independent police oversight mechanism.²² In 2018 alone, law enforcement killed 137 people and shot and injured 84.²³

Young men and teenagers from inner-city, disenfranchised neighborhoods continue to account for the vast majority of victims of unlawful killings by the police. Their relatives, in particular their women relatives, are left to face a long struggle for justice, truth and reparation, as well as frequent intimidation and harassment by the police.

There have been incremental improvements in the state's response to killings by police over the past 20 years and in 2014 and 2015 the annual number of killings by law enforcement officials was halved compared to the previous 10 years. However, impunity for killings by police remains widespread.

Amnesty International's research in 2016 found that long-standing and well-documented unlawful practices by the police continue. According to numerous testimonies gathered, after fatal

¹⁹ A/HRC/30/15, recommendations 120.1 (Timor-Leste); 120.2 (France); 120.3 (Algeria); 120.4 (Cabo Verde); 120.5 (Canada); 120.6 (Chile); 120.7 (Democratic Republic of Congo); 120.8 (Denmark); 120.9 (Ecuador); 120.10 (Indonesia); 120.11 (Sierra Leone); 120.12 (Spain).

²⁰ Human Rights Watch, Not Safe at Home Violence and Discrimination against LGBT People in Jamaica, October 2014; Human Rights Watch, Hated to Death, available at: <https://www.hrw.org/reports/2004/jamaica1104/jamaica1104.pdf>.

²¹ Amnesty International, Waiting in Vain: Unlawful police killings and relatives' long struggle for justice, (AMR 38/5092/2016).

²² INDECOM Quartely, October-December 2018, available at: <https://www.indecom.gov.jm/wp-content/uploads/2019/06/The-INDECOM-Quarterly-October-December-2018-4th-Quarter-Final.pdf>.

²³ INDECOM Quartely, October-December 2018.

shootings, police often tamper with the crime scene. These findings are corroborated by INDECOM research.²⁴

It continues to be alleged by multiple sources that spoke to Amnesty International that extrajudicial executions are used as an alternative to arrest and lengthy criminal proceedings by on- and off-duty law enforcement officers. Numerous witnesses and relatives of those killed by the police describe the police as “killa police” or “designated killers.” According to INDECOM, in some cases the same police officers have been implicated in multiple killings.

Information gathered by Amnesty International points to a strong likelihood of individual police officers or even units tasked with carrying out extrajudicial executions on the orders of some governmental authorities or with its complicity or acquiescence. At the very least, it points to a complete failure of internal accountability within the Jamaican Constabulary Force (JCF) to review the conduct of its officers and prevent the deployment of officers who are unsuitable for duty.

Deaths in police custody also remain a concern, with two such deaths in 2018 alone.²⁵ The case of Mario Deane, who was detained on his way to work in 2014 for allegedly possessing cannabis, and who died from injuries related to a beating in his prison cell, is an example of this. Five years later the case remains in court.²⁶

INTIMIDATION AND HARASSMENT OF VICTIMS’ RELATIVES

The impact of killings by police on whole families is profound and, given that many heads of households in Jamaica are women, the burden of pursuing justice often falls to the mothers, sisters, aunts and wives of the victims.

In 2016, Amnesty International interviewed more than 50 relatives of 28 people believed to have been unlawfully killed by the police between 2003 and 2014. Most had experienced intense and pervasive harassment and intimidation by police in their pursuit of justice, truth and reparation, causing them further mental suffering.

In some of the cases documented, police treatment of victims’ families may constitute cruel, inhuman or degrading treatment or punishment. Relatives interviewed by Amnesty International described many forms of harassment and intimidation from psychological harassment to arrest and unlawful detention to attacks and alleged unlawful killings.

In interviews with Amnesty International, senior police representatives flatly denied receiving any reports of intimidation and harassment by police of relatives of the victims of killings by police.

THE SLOW JUSTICE SYSTEM AND LIMITATIONS ON ACCESS TO JUSTICE

Severe delays in the criminal justice system are a major structural barrier to reducing crime in Jamaica and to holding those suspected of criminal responsibility for unlawful police killings to account. The Ministry of Justice has, however, reported some advances in reducing the court backlog, which is an important achievement.²⁷

²⁴ See INDECOM, Quarterly Report, January to March 2018, p.5 which states: “Since INDECOM commenced its independent investigative function in 2011 it has now enquired into over 1000 fatal shooting incidents, and many hundreds of nonfatal shooting injury incidents. The volume of such investigations, an ever increasing data set of information, and the frequent testimony and complaints cited by citizens across Jamaica, give cause for continuing concern that the allegation of the planted firearm is not a practice of the past but remains entrenched amongst some officers.”

²⁵ INDECOM Quarterly, October-December 2018, p.4

²⁶ Jamaica Observer, Mom remembers murdered Mario Deane five years later, 4 August 2019, available at: <http://www.jamaicaobserver.com/news/mom-remembers-murdered-mario-deane-five-years-later>

²⁷ Jamaica Observer, Chuck: 40% reduction in criminal case backlog, 23 May 2019. According to news reports the Minister of Justice reported a 40% reduction in the backlog of cases in criminal cases in parish courts between December 2016 and the end of the fiscal year 2018/2019.

In the case of alleged unlawful killings by police, several key actors in the criminal justice system play a critical role in facilitating access to justice. The Director of Public Prosecution (DPP) determines whether or not to prosecute a case. A Special Coroner's Court conducts an inquest into killings by police to establish the cause of death and whether a killing was lawful or not. The Court's decision is then referred back to the DPP who decides whether to prosecute or close the case.

Nearly all those interviewed by Amnesty International expressed frustration at the DPP's reluctance to prosecute in police killing cases and long delays when determinations to prosecute were made. Over the years, multiple reports also found that the failure of the DPP to prosecute police killings in a timely manner was a major barrier to justice, to prevent similar violations in the future, and to provide effective remedy and full reparations for victims.²⁸ In addition, the Special Coroner's Court has consistently had limited resources to deal with the number of cases it receives.

CHALLENGES TO POLICE OVERSIGHT

INDECOM, the independent police oversight mechanism, has seen significant successes in reducing police killings. Since its inception in 2010, the number of killings by police has dropped, with less than 200 people killed per year by law enforcement between 2014 and 2018, compared with consistently more than 200 killed annually between 2005 and 2013.²⁹ In 2019, there were 86 fatal police shootings, the lowest number in almost 20 years, according to the oversight mechanism.³⁰

While for decades Amnesty International was aware of only a handful of convictions for police killings, as of July 2016, INDECOM had charged almost 100 officers with various offences.³¹ As of October 2019, 49 officers were awaiting trial for murder or manslaughter, and as of April 2019, 21 convictions had been secured against law enforcement officials – three of those for murder, and three for manslaughter.³²

All indicators suggest that through improved investigations and prosecutions, INDECOM has created an important deterring effect for killings by the police, making way for arrests and charges on an unprecedented number of cases. For example, in August 2019, following a six-and-a-half-year investigation into the shooting of Matthew Lee, INDECOM issued charges against six members of the police. Such prosecutions, which facilitate the families' access to justice, importantly help to dismantle a culture of fear that has allowed the police to get away with unlawful killings for decades.³³

Nevertheless, since INDECOM's establishment, the Police Federation and other institutions have repeatedly challenged its statutory powers, on matters that could be clarified by Parliament, suggesting inconsistent support at the highest levels of the state for efforts to challenge impunity for extrajudicial executions. A 2020 judgement of the Judicial Committee of the Privy Council - Jamaica's highest court of appeal - in *Commissioner of the Independent Commission of Investigations v Police Federation and others* has held that Parliament in drafting the INDECOM Act explicitly gives the Commission an investigative role but did not also explicitly confer on it the

²⁸ See Amnesty International, *Waiting in Vain: Unlawful police killings and relatives' long struggle for justice*, (AMR 38/5092/2016), page 36-37; Amnesty International, 'Let them kill each other: Public security in Jamaica's inner-cities', (Index: AMR 38/001/2008), page 30; Amnesty International, *Amnesty International, Public Security Reforms and Human Rights in Jamaica*, (Index: AMR 38/001/2009) page 12; George Washington University Law School/JFJ, *Killing Impunity*, page 32

²⁹ INDECOM, *Quarterly Report, January to March 2018*, p.5

³⁰ See INDECOM, *Quarterly Report, October-December 2019*, Available at: <https://www.indecom.gov.jm/wp-content/uploads/2020/01/The-INDECOM-Quarterly-October-December-2019-4th-Quarter.pdf>

³¹ Amnesty International, *Waiting in Vain: Unlawful police killings and relatives' long struggle for justice*, (AMR 38/5092/2016), p.34

³² Information provided by INDECOM 1.10.19

³³ Amnesty International, *Jamaica: Six police officers charged over killing of Matthew Lee*, 16 August 2019, Available at: <https://www.amnesty.org/en/latest/news/2019/08/jamaica-six-police-officers-charged-over-killing-matthew-lee/>

powers to prosecute, which until now it has been exercising in cases of alleged police misconduct.³⁴

Such challenges raise concerns over the sustainability of the practical achievements that Jamaica has made through INDECOM, in holding police to greater account for human rights violations. Indeed, Amnesty International has found little evidence of a change in the way police operate in recent years.

In this regard, Jamaica has failed to strengthen internal accountability in the police through policy changes. For example, in 2015, Jamaica's Joint Select Committee of Parliament met to review the INDECOM Act and after considering submissions from academics, NGOs, the DPP, the Jamaica Constabulary Force, the Jamaica Defence Force, and the Police Federation recommended a number of revisions to the Act to clarify INDECOM's functions. Among other points, it recommended amending the Act to ensure that INDECOM can "institute and undertake criminal proceedings, which appear to the Commissioner on reasonable grounds, to relate to an incidence or offence under this act."³⁵ To date, however, this amendment, and others, have not been made.

No matter how effective, INDECOM cannot have sole responsibility for improving accountability in the police. This requires improved police accountability structures within the police and a criminal justice system that operates effectively. However, advocating for police reform has been largely left to the efforts of local NGOs.

For example, in 2019, the NGO Jamaicans for Justice (JFJ) won its case at the Privy Council against the Police Service Commission (PSC) – which has responsibility for appointments, promotions and discipline - after challenging the promotion of an officer who was allegedly implicated in dozens of alleged unlawful killings. The Court's decision held that the PSC, in discharging its statutory functions, has a duty to conduct investigations into allegations of human rights violations in relation to police officers who are recommended for promotions, especially where there are allegations of police killings.

JFJ has also led on human rights training of the police. In a baseline assessment, it found that less than 1% of police recruits could correctly name three laws that contain human rights protections, and less than a third could correctly name three policies of the JCF that regulate their contact regarding human rights and vulnerable groups.³⁶

Amnesty International invites the government of Jamaica to work to amend the INDECOM Act in line with the recommendations made by the Joint Select Committee in 2015 and explicitly giving INDECOM the same powers to arrest, charge and initiate prosecutions as law enforcement officers. The significant reduction in police fatal shootings since 2014 is a clear indicator of INDECOM's effectiveness when given sufficient powers.

³⁴ Commissioner of the Independent Commission of Investigations (Appellant) v Police Federation and others (Respondents) (Jamaica), Case ID: JCPC 2019/0098, (2020)

³⁵ Report of the Joint Select Committee of Parliament on the Review of the Independent Commission of Investigation Act, page 5

³⁶ Jamaicans for Justice, The Justice Report, Issue 1, September 2019, "Creating a Force for Good."

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAMAICA TO:

HUMAN RIGHTS FRAMEWORK

- Establish a National Human Rights Institution, in accordance with the Paris Principles;
- Promptly accede to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, without making any reservation, and implement them into national law;
- Promptly ratify the Rome Statute of the International Criminal Court, signed on 8 September 2000, and implement it fully into national law;
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and opt-in to the inquiry and inter-state procedures;
- Accede to the International Convention for the Protection of All Persons from Enforced Disappearance, without making any reservation, implement it into national law and recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or other states parties;
- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Ratify ILO Conventions 155 (Occupational Health and Safety) and the recently adopted ILO Violence and Harassment Convention of 2019, at the earliest date possible.

LGBTI RIGHTS

- Fully and thoroughly investigate all incidents and acts of violence suspected of being motivated by homophobia or transphobia and bring to justice those suspected of criminal responsibility;
- Implement comprehensive anti-discrimination legislation, after meaningful consultation with civil society, to protect against institutionalized and societal discrimination of socially marginalized groups.

THE DEATH PENALTY

- Establish an official moratorium on executions with a view to abolishing the death penalty;

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

CLIMATE AND HUMAN RIGHTS

- Continue advocacy to address the climate change crisis, including by ratifying the Escazú Agreement;
- Continue to support the recognition by the UN of the right to a safe, clean, healthy and sustainable environment.

UNLAWFUL KILLINGS BY THE POLICE

- Work to amend the INDECOM Act in line with the recommendations made by the Joint Select Committee in 2015 and explicitly grant INDECOM the same powers to arrest, charge and, if there is sufficient admissible evidence, initiate prosecutions as law enforcement officers.
- Publicly condemn extrajudicial executions, unlawful killings, ill-treatment of families by police, and any other crime under international law or human rights violation and send a clear and unequivocal message to the Jamaica Constabulary Force that these crimes will no longer be tolerated and those committing such crimes will be investigated and prosecuted;
- Fully implement the Basic Principles with reference to Amnesty International's Use of Force Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Strengthen police training to focus on communication and de-escalation and prevention of situations in which there may be a need to use force;
- Continue to urgently reform the criminal justice system to ensure victims have access within a reasonable time to a competent, independent and impartial tribunal;
- Establish safe spaces or safe rooms in courthouses for witnesses and family members of victims allegedly killed by law enforcement officials to reduce intimidation and harassment in the court;
- Ensure that judges thoroughly observe the actions of any police in the court room in cases of alleged criminal misconduct against the police, and in case of intimidating behaviour exclude the relevant officers from the court;
- Address the unsustainably high turnover of personnel within the Jamaica Constabulary Force by increasing salaries for police and improving their working conditions and professional training.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE³⁷

Jamaica: Now is the Time to Legislate to Give Jamaica's Police Oversight Mechanisms Powers to Charge and Prosecute, 8 July 2020, (Index: AMR 38/2677/2020)

Human rights in the Americas: Review of 2019 – Jamaica, 27 February 2020, Index number: AMR 01/1353/2020

Amnesty International Report 2017/18: Jamaica, 22 February 2018, (Index: POL 10/6700/2018)

Amnesty International Report 2016/17: Jamaica, 22 February 2017, (Index: POL 10/4800/2017)

Amnesty International Report 2015/16: Jamaica, 23 February 2016, (Index: POL 10/2552/2016)

Waiting in vain - Jamaica: unlawful police killings and relatives' long struggle for justice, 23 November 2016, (Index: AMR 38/5092/2016)

³⁷ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/americas/jamaica/>

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FIRST PUBLISHED OCTOBER 2019; UPDATED AUGUST 2020

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