

# JAMAICA

## Killings and Violence by Police: How many more victims?

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List of most common abbreviations used in this report:

BSI Bureau of Special Investigations

DPP Director of Public Prosecutions

OPR Office of Professional Responsibility

PCCA Police Public Complaints Authority

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# **JAMAICA**

## **Killings and Violence by Police: How many more victims?**

### **INTRODUCTION**

*“This government attaches paramountcy to the recognition and protection of human rights. I think there is a feeling that unless someone is convicted, there is a lack of political will. Such a conclusion is unfounded and resented by a government which has done what we have done to make human rights not just a catch phrase.”*

*Statement by Prime Minister P. J. Patterson to Amnesty International Secretary General Pierre Sané, September 2000.*

*“We had a peaceful demonstration to tell Jamaica that once again the police have lied to us.”*  
Sister of victim of police shooting, Kingston, August 2000.

The population of Jamaica has grown used to a police force some of whose members fail to respect human rights. In September 2000, Amnesty International researchers investigated the public attitude towards the police in deprived, urban areas such as Grants Pen, where many human rights abuses occur. Many described the police not as protectors from crime but as a force to be feared, almost akin to an occupying force. In the communities visited by Amnesty International, almost everyone claimed to have had direct experience of police brutality. It was therefore not surprising that in the three schools Amnesty International visited, only one schoolchild said they would consider becoming a police officer.

Amnesty International is gravely concerned that the authorities in Jamaica -- despite numerous assurances to the contrary -- are failing to prevent serious and systematic human rights violations at the hands of the police and security forces.

Police abuse has been documented by national and international organisations numerous times in the past 30 years. In 1986, an Americas Watch report, *Human Rights in Jamaica*, concluded that there existed in Jamaica: “a practice of summary executions by the police; a practice of unlawful detentions by the police at times accompanied by police assaults on detainees; and a practice of confining detainees in police station lock-ups under squalid and degrading conditions.”

Fifteen years later, Amnesty International finds that these practices continue.

The practice of extrajudicial executions, together with the unjustifiable use of excessive force, continues.

The rate of lethal police shootings in Jamaica is one of the highest in the world. An average of 140 people per annum have been shot and killed, according to official statistics, for the last ten years, in a country whose population is only 2.6 million. Police accounts of victim-initiated “shoot-outs” continue to be disputed in many cases by witness accounts and contradicted by forensic evidence. Amnesty International considers that the manner in which deadly force is frequently employed and the absence of prompt, thorough and effective investigations are consistent in many instances with a pattern of extrajudicial executions.



*The practice of torture and ill-treatment by the security forces continues.*

*Amnesty International has documented many cases of police brutality, some amounting to torture. Victims commonly include criminal suspects and their relatives, as well as children and women. Documented methods have included beatings, burns with hot irons, suffocation in water and mock executions.*

*Seven years after the asphyxiation of three men held for two days in an overcrowded police lock-up containing 19 men, the practice of detaining individuals in police custody in appallingly squalid conditions continues.*

*Severe overcrowding remains the norm and in many cases conditions amount to cruel, inhuman and degrading treatment and place those detained at risk of death or serious injury. In most cells there is no natural light, no access to latrines and inadequate food and water. Detainees continue to be routinely denied access to medical care, lawyers and relatives. Amnesty International also finds that, despite commitments given in 1999 to remove all children from police lock-ups, children continue to be detained in police lock-ups.*

THE UNIVERSALITY OF HUMAN RIGHTS

It is indisputable that Jamaica suffers from appalling levels of violent crime. Exacerbated by poverty, domestic violence, drug and politically motivated violence, the murder rate escalated throughout the 1980s and early 1990s, peaking at 1938 reported homicides in 1997; one of the highest per capita murder rates in the world. The most recent report from the US State Department indicated a homicide rate exceeding 30 per 100,000 persons.<sup>1</sup> It is a phenomenon affecting all levels of society.

Many in Jamaica have implied that those who seek to defend human rights care little for the victims of crime. In September 2000, the Prime Minister, P J Patterson, appeared to endorse this view, stating: "Human rights cannot be confined to the murderers and rapists and robbers... The innocent on which they trade also have human rights..." He also accused Amnesty International of being "preoccupied with the perpetrators of crime" and of having "insufficient" concern for the victims.

Amnesty International does not believe that the human rights of those accused or convicted of crimes are in conflict with the rights of victims of violence, nor that such rights mutually exclusive. Society does not need to violate the rights of those suspected or guilty of crimes in order to reduce law breaking. Quite the opposite is true, such violence is more likely to lead to an increase in crime.

As the South Africa Constitutional Court acknowledged in 1995 when it abolished the death penalty, "it is only if there is a willingness to protect the worst and the weakest amongst us that all of us can be secure that our own rights will be protected" (emphasis added).

Amnesty International -- as an organization working for the victims of human rights violations -- is sympathetic to all victims of violence and their families. The organisation hopes that its campaign, if successful, to halt human rights violations by the security forces in Jamaica will increase the public's trust and cooperation with law enforcement agencies, thereby leading to a reduction in the level of violent crime.

Amnesty International believes itself supportive of the many professional and dedicated police officers of Jamaica whose reputations are tainted by the actions of their fellow officers guilty of committing human rights violations.

<sup>1</sup> US Department of State, Bureau of Democracy, Human Rights and Labour, *Jamaica: Country Reports on Human Rights 2000*; <http://www.state.gov/g/drl/rls/hrrpt/2000/wha/index.cfm> February 2001.

A study conducted by the Police Executive Research Forum (PERF) - *Violent Crime and Murder Reduction in Kingston, Executive Summary and Strategies* - concluded, "So urgent is the issue of crime to the lives of Jamaicans that it is fair to say that unless there is a virtual sea change in the crime issue the country's very existence is in danger", Washington D.C., January 2001, pp. i.

It is also indisputable that the policing of Jamaica is a complex, dangerous and difficult task. Amnesty International does not underestimate the perils faced by Jamaican police officers in the course of their duties. Nor does the organisation, in addressing human rights abuses by police officers and soldiers, seek to detract from the sympathy offered to those officers killed or wounded in the line of duty. At least 112 police officers have been killed over past ten years. On 11 September 2000, Amnesty International's Secretary General personally offered the organisation's condolences to the Commissioner of Police for officers killed in the line of duty.

Extrajudicial executions, torture and ill-treatment continue, despite the fact that Jamaican law prohibits torture and cruel, inhuman or degrading treatment and provides mechanisms to enable victims to obtain redress,<sup>2</sup> and despite other reforms that have taken place since the early 1990s.<sup>3</sup>

If the mechanisms currently exist in Jamaica to fairly adjudicate whether a police officer is guilty of human rights abuses, the resources those mechanisms require and the

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<sup>2</sup> For example, the Jamaican constitution provides for a range of rights. These include the right to life, liberty, security of the person, the enjoyment of property and the protection of the law; the right not to be intentionally deprived of life; the right to seek compensation in cases of arbitrary arrest and detention; and the right not to be subjected to torture or to inhuman or degrading punishment or other treatment.

<sup>3</sup> These have included the establishment of a civilian body to review investigations of abuses, the Police Public Complaints Authority; reformulated training to police officers on the use of force as well as the creation of a specialised unit to investigate all police shootings - the Bureau of Special Investigations.

political will to enforce them appear to be lacking. Prosecutions for extrajudicial killings, torture and other human rights abuses remain exceptional occurrences. Investigations fail to conform to international standards. The scenes of shootings are not preserved; with forensic and ballistics evidence contaminated or removed. Autopsy reports are so poor that one respected international pathologist described them as “not autopsies in the normally understood sense of the term”. Witnesses, relatives of victims or victims themselves have been intimidated, and, in a substantial number of cases, received death threats.

In this report, Amnesty International documents a disturbing pattern of brutality and calls on the authorities of Jamaica to turn their vocal commitment to human rights into action. The organisation makes recommendations to the Jamaican authorities, and to the international community, to enable Jamaica to fully respect human rights and to fulfill its obligations under international human rights law.

This paper is published as part of Amnesty International's worldwide campaign against torture and other cruel, inhuman and degrading treatment.

## **RELEVANT INTERNATIONAL LEGAL STANDARDS**

Jamaica has ratified a number of international and regional treaties, such as the *International Covenant on Civil and Political Rights (ICCPR)*; the *American Convention on Human Rights (American Convention)* and the *UN Convention on the Rights of the Child*. By becoming a state party to these treaties, Jamaica has voluntarily agreed to ensure the rights contained therein are recognised.

Protections and rights are also conferred by various internationally acknowledged non-treaty standards and guidelines. These set forth the duty upon states to prevent and investigate human rights violations. The standards represent the consensus of the international community to which states should aspire. They have the persuasive force of having been negotiated by governments over many years, and of having been adopted by political bodies such as the UN General Assembly. Many are considered by states to have the binding force of treaties.

Together these treaties and standards, reinforced by judgments and decisions of the Inter-American Court of Human Rights and the Human Rights Committee (established under the ICCPR) constitute an international framework of fundamental safeguards to protect against abuses.

### **The right to life**

International standards and treaties prohibit the arbitrary deprivation of life - a characteristic of the killings described in this report. When police deliberately shoot and kill a person who poses no deadly threat, they are violating the victim's right to life. No circumstances can be invoked - including internal political instability or any other public emergency - to justify extrajudicial executions and these must not be carried out under any circumstances.

Amnesty International is campaigning for the Jamaican authorities to abide by a host of international human rights treaties and standards including:

- Inter-American Convention on the Forced Disappearance of Persons*
- International Covenant on Civil and Political Rights (ICCPR)*
- United Declaration on Human Rights (UDHR)*
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.*
- UN Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment*
- UN Code of Conduct for Law Enforcement Officials*
- UN Convention against Torture, Inhuman or Degrading Treatment or Punishment (Convention Against Torture)*
- UN Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)*
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*
- UN Declaration on Human Rights Defenders*
- UN Guidelines on the Role of Prosecutors*
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.*
- UN Rules for the Protection of Juveniles Deprived of their Liberty*
- UN Convention on the Rights of the Child (CRC)*

### **The international prohibition on torture**

Torture is prohibited in numerous international treaties and standards, including the ICCPR and the *American Convention*. The prohibition is absolute and applies in all circumstances. There can be no justification, excuse or impunity for those who order or commit acts of torture. The *ICCPR* and the *American Convention* also protect the right to liberty and security of persons and the right to freedom from cruel, inhuman or degrading treatment or punishment.

### The use of force

International standards govern the use of force and firearms by the police. Standards include the UN *Code of Conduct for Law Enforcement Officials* and the UN *Basic Minimum Standards on the Use of Force and Firearms*. These provide that deadly force should be used only as a last resort in response to imminent threat of death or serious injury, and only when all other measures have been exhausted.

### FATAL SHOOTINGS BY THE SECURITY FORCES

International standards governing the use of force and firearms include the UN *Code of Conduct for Law Enforcement Officials* and the UN *Basic Minimum Standards on the Use of Force and Firearms*. These provide, *inter alia*, that deadly force should be used only as a last resort in response to imminent threat of death or serious injury and only when all other measures have been exhausted.



*In their deployment of lethal force, police officers in Jamaica regularly flout international standards, as well as national law and internal codes of conduct -*

*including the force motto - We Serve... We Project... We Reassure...*

The Jamaica Constabulary Force (JCF) is an agency of approximately 7,000 individuals. It has been responsible for an average of 140 deaths per annum in the last ten years. Although these figures indicate a comparative reduction from the period of the 1980s, which saw a peak of 354 killings in 1984, the numbers remain excessively high,

as the table on page 11 indicates. Per capita rates of police killings show that Jamaican police kill at a rate almost five times that of their South African counterparts. In South Africa - a country facing similar problems to Jamaica in terms of escalating levels of violent crime and whose population is approximately 16 times that of Jamaica (42.4 million) - recent figures indicated that there were 472 deaths as a result of police action during the course of arrest or other situations during the period 1 April 1999 to 31 March 2000.<sup>4</sup>

Unjustifiable killings by the security forces are not a new concern for those involved in monitoring human rights in Jamaica. Previous reports have documented patterns of excessive force and made recommendations - including in September 1967, *Government, the Police and Personal Freedom*, Jamaica Council for Human Rights; 1986, *Human Rights in Jamaica*, Americas Watch (New York) and the US Department of State.

*In this report, Amnesty International has documented cases of:*

- ❑ *Extrajudicial executions.* The manner in which deadly force is employed and the absence of prompt, thorough and effective investigations are consistent in many instances with a pattern of extrajudicial executions. *Victims are commonly criminal suspects (particularly for crimes involving firearms, or those thought to be carrying firearms, as well as those mistaken for suspects, and bystanders.) Some killings may be retaliatory because of personal grudges.* In some instances, deliberate and unlawful killings have allegedly been carried out upon the orders or in the presence of high-ranking police officers;
- ❑ Unjustifiable use of lethal force to effect arrests with no prior attempt to resort to non-deadly means;
- ❑ Unjustifiable use of lethal force against unarmed civilians posing no threat to human life, including excessive force employed as a means of crowd control.

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<sup>4</sup> Annual report submitted to the South African parliament by the statutory oversight body, the Independent Complaints Directorate.

The pattern of excessive force continues despite procedural reform. In 1991, a review of the JCF undertaken by British police officers at the request of the government of Jamaica concluded that “no...strategy exists in Jamaica...to ensure that the use of firearms is an action of last resort only and not an immediate response...The continuing level of deaths attributable to firearms operations involving the JCF are undoubtedly produced by their use of firearms as an action of first resort.”<sup>5</sup>

Although never released, the report led to the adoption of police regulations incorporating the major provisions of relevant international human rights standards. The authorities insist that these are stringently applied and enforced. In February 1997 a ‘Force Order’<sup>6</sup> endorsed the provisions of the UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.

Although members of the government have publicly acknowledged allegations of human rights violations by the security forces,<sup>7</sup> to Amnesty International’s knowledge no government official has ever publicly accepted the occurrence of extrajudicial executions. Indeed, Amnesty International is concerned that comments made by some government officials have in fact appeared to endorse the use of unjustifiable lethal force by police officers. In January 2001, Amnesty International called upon the *Minister of National Security, the Honourable K D Knight, to immediately retract a statement in which he was quoted as stating: “The police must be able, if challenged [by gunmen] to respond swiftly, efficiently and*

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<sup>5</sup> Review of the Jamaica Constabulary Force, carried out by M. Hirst, Chief Constable of Leicestershire Constabulary, United Kingdom.

<sup>6</sup> The order states that the police “shall use only that force that is reasonably necessary to effectively bring the incident under control” and “shall meet force with no more force than is necessary in protecting the lives of the members or of others.”

Force orders are internal police regulations emanating from the Commissioner of Police. Failure to abide by a Force Order may lead to the imposition of disciplinary sanctions.

Regulations governing the use of force and firearms have been progressively expanded by the Commissioner of Police. Other Regulations provide for strict reporting mechanisms, also in accordance with international standards.

<sup>7</sup> On 18 March 1998, the Prime Minister, in a statement relating to the killing of three men by security forces urged the police to have “respect for human life”. Shortly after the killing of Leroy Bailey in June 1999, the Prime Minister conceded that the police “had fallen short from time to time in their responsibilities” and announced a plan “to rein in excesses”. The plan included restricting the use of high-powered weapons and new training to stress human rights and discourage resorting to firearms.

*effectively...I know I am going to be criticised for this, but gunmen who challenge the police...their place belongs in the morgue..."*

## **Extrajudicial executions**

*"This Administration has not condoned nor will ever condone, extrajudicial killings."*  
Minister of Foreign Affairs, Paul Robertson, in a letter to Amnesty International, 17 January 2001.

*"When we went to the mortuary they wouldn't let me see the body ... a female police officer said, 'If yuh ah walk wi' gunmen, yuh ah gunman too." (If you walk with gunmen, you too are a gunman).*  
Statement of a relative of a victim killed in an extrajudicial execution to Amnesty International.

*Executions shall not be carried out under any circumstances including... excessive or illegal use of force by a public official. Exceptional circumstances including... internal political instability or any other public emergency may not be invoked as a justification of such executions.*

*Principles 1 & 2 on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*

*The Jamaican police continue to claim that the majority of killings are the outcome of justifiable force by officers in the performance of their duties. Police reports describe most fatal shootings as the outcome of exchanges of gunfire, initiated by armed civilians.*

*However, statistical evidence shows that the number of civilians fatally shot by police is consistently many times larger than the number of police officers shot by civilians, as the table below indicates.*

If the number of armed civilians firing upon officers were as high as is claimed, it follows that more officers would be killed or injured by gunfire.

## POLICE AND CIVILIAN DEADLY FORCE

**Table 1: Civilians shot and killed by police 1983 - 2000** <sup>8</sup>

2000	1999	1998	1997	1996	1995	1994	1993	1992	1991
140	151	145	149	148	132	125	120	145	178
1990	1989	1988	1987	1986	1985	1984	1983		
148	162	181	205	178	210	354	196		

**Table 2: Police officers killed by civilians 1990 - 2000**

2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990
11	8	14	13	10	4	6	10	11	10	11

<sup>8</sup> Sources: Constabulary Communications Network (CCN); *The Edge of the Knife*, Paul Chevigny, NY Press, New York 1995; *Civilians shot and killed by police 1984*, Jamaica Council for Human Rights, Kingston 1985.

In a series of cases investigated by Amnesty International, official police accounts claimed that fatalities occurred as a result of victim-initiated “shoot-outs” but the pattern of killing, including attempted cover-ups, suggests that they were unlawful and deliberate killings.<sup>9</sup>

To Amnesty’s knowledge, no disciplinary or criminal action has yet been taken in any of the cases.

All the victims were described by police as either criminals or wanted criminal suspects. In several cases, victims received death threats before being killed. Families in every case reported intimidation and, in one case, the family received death threats after the killings. *In another case, relatives were subsequently arrested and ill-treated.* The pattern of injuries was consistent in most cases with a practice of deliberate incapacitation followed by killing - a fact evident despite the poor quality of state autopsy reports in every case. The evidence includes a visit by an Amnesty International delegation to the scene of one shooting three hours after it occurred.

### **Crime Management Unit**

One killing - that of William Richards - was committed by members of the Crime Management Unit. This special unit was established by the Prime Minister in September 2000, in response to demands for action on crime from the business community. It was reportedly the 13<sup>th</sup> such special unit established since 1976. Since the unit became operational there have been several other allegations, which Amnesty International considers credible, that it has committed other extrajudicial executions as well as acts of torture (detailed below).

*For example, Paul Harvey, aged 42, from Spicy Hill, Trelawny, was fatally shot after around 26 members of the Crime Management Unit arrived at his house in October 2000, in an operation which was reportedly led by the head of the squad. Police allegations of a shoot-out were disputed by community members, who alleged that Harvey was taken out of the house with his hands in the air and was then extrajudicially executed. Police allegedly removed a gun and*

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<sup>9</sup> The appendix lists further media reports of police killings which have occurred in disputed circumstances.

*ammunition from his body and his girlfriend was later arrested and charged with possession of ammunition.*

*The current head of the Crime Management Unit was reported to have headed the police party that killed Sylvester "Punk" Wint on 27 April 2000 in Mountain View, Kingston. Police claimed he was shot after running out of his house holding a baby and firing a gun during a police raid. According to witnesses, backed by a tape recording, he was shot and killed in his house as he begged for his life. A doctor later stated on a radio talk show that the gunshot wounds suggested that he had been killed while lying down. The shooting prompted several days of disturbances, during which at least three police officers and two men were killed.*

Amnesty International requested a copy of the autopsy from the authorities, however, it was received incomplete, and lacked any information on injuries sustained, stating only that the body was discovered, "lying on the ground suffering from gunshot wound". The government informed Amnesty International in February 2001 that the file had been sent to the Director of Public Prosecutions (DPP) for a ruling on 28 July 2000.<sup>10</sup>

### ***William Richards***

"The allegations contained in the report on the killing of William Richards are cause for grave concern and utter condemnation. The actions described are in total contravention of procedure and regulations under which our law enforcement officers are expected to carry out their duties."

Letter from Minister of Foreign Affairs to Amnesty International, January 2001.

In the early morning of 19 September 2000, Williams Richards was shot dead in his house in West Kingston by members of the Crime Management Unit. Amnesty International considers that strong evidence exists to suggest that the killing amounted to an extrajudicial execution.

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<sup>10</sup> Amnesty was informed that the internal police investigation had been supervised by the Police Public Complaints Authority, the civilian oversight body.

A police press release published in the media the following day stated that William Richards had been shot outside his house by officers after opening fire on police in the early morning. The statement also reported that police had recovered a .38 caliber revolver from his body and that Richards had been involved in gun and drugs crimes. Richards had reportedly been granted bail in July 2000, in connection with a murder charge.

An Amnesty International delegation visited the scene of the shooting three hours after it occurred and was informed by members of the local community that officers had entered William Richards' bedroom, placed his head in a drawer and shot him in front of his three year-old son, allegedly upon the instructions of a senior police officer. According to the same information, a senior member of the Crime Management Unit was also allegedly present at the scene. Richards was reportedly heard shouting "murder" before three or four shots were heard being fired.



According to those at the scene of the killing, officers forcibly removed other individuals in the house to other rooms. William Richards' girlfriend was reportedly locked in a bathroom, after she refused an offer for money in exchange

for information about the location of a firearm. She was subsequently arrested, detained and charged with wounding with intent. Two other people were taken into custody, including William Richards' three-year-old son, and released without charge several hours later.

Amnesty International was informed that the house had been searched for a second time after the shooting took place. The house had been ransacked and vital forensic evidence removed and disturbed. By the time the delegation arrived, Richards' body had already been removed - several hours before the arrival of investigative officers later that evening - and neither the property nor its surrounds had been sealed from the public, thereby preserving the scene for forensic investigation. The mattress and bed in Richards' room had been turned upside down and there was no bedding material on the bed. The drawers of the chest in which Richards had allegedly been shot had been

removed, and one appeared to be stained with blood and brain matter. There was more blood on the ceiling and walls of the room.

It was further alleged that police officers stole money and items of property from the house. Family members were subsequently refused permission to view Richards' body.

Amnesty International wrote to the Jamaican authorities expressing its concerns. In a reply the government stated "the allegations contained in the report on the killing of William Richards are cause for grave concern and utter condemnation. The actions described are in total contravention of procedure and regulations under which our law enforcement officers are expected to carry out their duties. Investigations into these allegations have not yet been completed. The ballistic certificate, Post Mortem and forensic reports are all outstanding. Statements have been collected from both civilian and police personnel. The completed report will be provided as soon as possible."<sup>11</sup> At the time of publication - seven months after William Richards' death - no further information had been received from the authorities on the status of any investigations into the killing.

### **Sean Robinson**

"Yuh never know your son was a bad man?"

Comment of police officer investigating the death of Sean Robinson to his relative.

*On 4 July 2000, Sean Robinson, aged 21, was shot dead by police at his home in Kingston. Accounts of the shooting - and the circumstances in which it occurred - suggest it amounted to a deliberate, retaliatory killing. Three days before his death, Sean Robinson reportedly received an anonymous death threat. The caller stated that Sean Robinson would be killed in connection with his escape from police custody in 1999.*

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<sup>11</sup> The letter also stated that Williams' son would be provided with "psychological and counselling support through the Government's Victim Support Programme and other agencies", in keeping with the country's obligations as a state party to the Convention on the Rights of the Child.

Police gave inconsistent accounts of the circumstances around the shooting. After initially claiming he had been killed in a shoot-out on the road, after firing on police, a subsequent official report alleged that he died in a shoot-out inside his home. When an Amnesty International researcher visited the property in August 2000, gun shots were clearly visible on the door of the cupboard and in the clothes inside it.

Eye witnesses however stated that at least ten police officers forced entry to Robinson's house and then shot him in a cupboard inside of which he was hiding. Two young children and two adults were held at gunpoint in the hall. More police armed with M16 rifles and another police vehicle arrived soon after. Officers subsequently denied Robinson access to medical attention.

Official police reports stated that two arrest warrants had been served on Robinson, including one for the murder of a police officer. No police officer arriving at the house however ever produced or made reference to a warrant, despite requests.

One officer reportedly suggested to Sean Robinson's mother that her son had been involved the murder of a police officer and other killings, saying, "Look how much man your son kill!" (look how many people your son killed). Police also allegedly assaulted relatives, including a woman who was three months pregnant, demanding that they reveal the location of a firearm.

Medical and eye witness reports also suggested that further injuries may have been inflicted after Sean Robinson was taken, alive, from the house. A state autopsy report indicated that Sean Robinson was shot in both his left and right arms and left thigh. However, witnesses alleged that the first time they viewed the arm injuries was at the morgue. Sean Robinson's mother was allegedly forcibly prevented from accompanying her son when police drove him away.

Family members were denied access to view Sean Robinson's body at the morgue for three days, initially, on the grounds that he had already been identified by police, and subsequently, by police investigators, on the grounds that they should wait until after the autopsy. However, with the assistance of a local human rights organization, they managed to get an independent pathologist to observe the state autopsy.

Family members were also reportedly intimidated and obstructed from making a full statement of complaint by a police investigator, who told them that the statement was too long and that it was not for a court. The investigating officer also allegedly insinuated that the killing was in some way in response to Sean Robinson's previous criminal involvement, stating, "you never know your son was a bad man?"

Amnesty International received an incomplete copy of the state autopsy report from the government. However, the organisation reviewed a subsequent autopsy report carried out by an independent pathologist, which indicated that Sean Robinson had been shot in the

back (exiting left chest), chest (exiting loin), thigh and in both arms. These findings appear to be consistent with the use of excessive force.

Amnesty International was informed on 17 January 2001 that administrative and criminal investigations into the incident had been completed by the police investigative unit, the Bureau of Special Investigations (BSI), and that the file had been transferred to the DPP for a ruling.

### **Patrick Alfred Genius**

Patrick Genius, a 33 year-old welder, stall-holder and father of three children, was fatally shot by the police in August Town, Kingston, on 13 December 1999. The circumstances of the shooting suggest that it amounted to an extrajudicial killing.

Eye witnesses indicated that Patrick Genius was detained by several plain clothes police officers travelling in an unmarked police car as he rode his bicycle. Witnesses stated that Patrick Genius had his hands up in the air before he was shot at close range in the head.

Autopsy report findings are consistent with this account, indicating the presence of five gunshot wounds on the body - one in both thighs, and two in the back of the head (including a graze) and one in the left side of the head. An independent pathologist who reviewed the report concluded that the pattern of injuries indicated the likelihood of deliberate incapacitation followed by killing.

Despite repeated requests to the authorities to be informed of the date and location of the autopsy, the family were only informed about it the day before it took place and were therefore unable to appoint an independent pathologist in time to witness the autopsy proceedings. Amnesty International requested and received a copy of the autopsy report of the government pathologist but this report was incomplete. However, the organisation obtained a complete copy of the same report from another source.

Following the shooting police officers allegedly searched Patrick Genius's house and attempted to search his mother's house, stating that they were looking for arms. They failed to present a warrant or any form of identification on either occasion. During the course of both the search and the attempted search, officers attempted to force family members to leave the premises while conducting the search and family members alleged they were intimidated and threatened. Items including money and jewellery were also reportedly stolen from Patrick Genius's house.

Police investigators allegedly failed to initiate an investigation until five months after the shooting took place, when statements were requested from family members. Following a ruling by the DPP, a coroner's inquest was due to start in September 2000. It was subsequently delayed several times and was scheduled for 6 March 2001.

**Delroy Lewis**

Delroy Lewis, aged 29, was fatally shot in August Town, St Andrew, on 2 September 1999, in circumstances which suggest that the killing was an extrajudicial execution.

The police account of the shooting alleged that a group of three gunmen, one of whom was Delroy Lewis, opened fire on police officers after they were challenged by police for looking "suspicious". They also alleged that a semi-automatic pistol was taken from him and that the two other gunmen escaped on foot and were not apprehended.

Witnesses however stated that at least seven police officers in plain clothes, including an inspector, were seen entering Delroy Lewis' yard, shortly after several police vehicles arrived outside the house. The officers were seen proceeding to the back of the yard; an area hidden from public view by a fence on one side, and dense vegetation and a hillside on the other. Neighbours and others including Delroy Lewis' girlfriend were refused entry to the yard, but those outside the house reported seeing shots fired by police officers at a tree in the yard as the police went around the back, possibly indicating an attempt to make the shooting appear an exchange of fire.

Within a few minutes, Delroy Lewis was shot. One witness alleged that he was shot several times in the head and chest after being surrounded by several officers. The witness alleged that he had first put his hands up in the air and been searched and asked whether he was carrying a gun, which he denied. An officer seen putting a gun to his head was reportedly heard saying, "p-hole, you remember me, ah

gonna kill yuh" ([insult] ... Do you remember me? I'm going to kill you).

About five minutes after the shooting, police emerged from the yard, pulling Lewis' body by the feet. The body was thrown into a police jeep, and transported directly to the Madden Funeral Parlour. Police refused to let relatives accompany the body.

Amnesty International received an incomplete copy of the state autopsy report from the authorities, which indicated that Delroy Lewis had been shot in the chest. The national civil rights group Jamaicans for Justice was denied permission for an independent pathologist to observe the state autopsy.

The findings of a second autopsy report performed by an independent pathologist four days after the shooting were also reviewed by Amnesty International and appear to be consistent with the account of the shooting given by witnesses. The report indicated that Delroy Lewis had been shot in the head, with a close range bullet wound to his right temple, and had also been shot in the chest and right and left shoulders. The cause of death was given as "shock and haemorrhage as a result of Head Injuries in a Firearm Injuries Case (unnatural)." The report also stated that an incomplete postmortem had been performed in the first instance as the skull had not been opened.

The family of Delroy Lewis received no official notification of his death or autopsy date. A police investigator allegedly refused to take a

complete statement from the family, telling them, "Just tell me the important bits. The statement is too long for me to write. I'm not in court so don't bother to show me what happened."

Investigating police officers did not arrive at the house until a week after the shooting and failed to inspect the yard where the shooting took place. It is reported that none of the officers alleged to have been present have been removed from front-line duty, although a number have reportedly been transferred to other divisions.

Since Delroy Lewis' death, Amnesty International has been informed that some members of his family have received several anonymous death threats. A Coroners' Court hearing scheduled for 12 February 2001 was delayed until 5 March 2001, after witnesses failed to appear.

### **Firearms as a first resort: the use of excessive lethal force**

The practice of using firearms as a first, rather than a last, resort continues, with predictably deadly results.

The cases described below are amongst the many where use of indiscriminate excessive force against civilians has grossly violated international standards. These standards provide that force should only be used in proportion to the threat faced - and that firearms should only be used in self defence or the defence of others against an immediate threat of death or serious injury and only when "less

*extreme measures are insufficient to achieve these objectives'' and ...in a manner likely to decrease the risk of unnecessary harm.'*<sup>12</sup>

*Police have killed or injured individuals after firing indiscriminately in populated areas; during traffic stops, at the end of pursuits, on unarmed suspects fleeing non-violent crime scenes and in other questionable circumstances. In most cases suspects have been hit with multiple gunfire.*

### *Shooting of a public bus*

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<sup>12</sup> UN *Basic Principles on the Use of Force and Firearms*, cited above, principles 9 and 11.

At least six out of seventeen passengers were seriously injured when police officers opened fire indiscriminately on a public bus on 30 June 2000, in an action in clear violation of both international standards as well as JCF policy.<sup>13</sup> One of those hurt was a fifteen year old girl.



Police chased the bus, which had failed to obey police signals

to stop. According to passenger accounts, after a fellow passenger was shot in the foot, another started waving his white shirt outside a window, shouting, "don't shoot". Two police officers in a car beside the bus shot directly at him, injuring him and others. Police finally forced the bus to stop by shooting its tyres, but injured passengers stated that they were denied medical attention until all the bus passengers had been searched. One man, unable to work since the incident, has since developed Post Traumatic Stress Disorder. He has received no financial or medical assistance from the state. Police subsequently alleged that they had information that the bus was carrying gunmen, but no guns were found.

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<sup>13</sup> JCF policies forbid firing from or at a moving vehicle unless necessary to protect life. Appendix "A" to Force Orders 2494, dated 20 February 1997, Procedures and Regulations, provide that:

B.3 "Weapons shall not be fired from a moving vehicle unless it is necessary to protect a life"; B.4 "Weapons shall not be fired at a moving vehicle unless that vehicle poses an immediate threat to human life"; B.5 "Firearms shall not be discharged when it appears likely that an innocent person may be injured."

The incident prompted an emergency meeting between the Minister of National Security and the Commissioner of Police. Amnesty International was informed in February 2001 that the incident is still awaiting a ruling by the DPP for determination of criminal or disciplinary proceedings.

### *Tivoli Gardens, May 1997*

Army and police officers are alleged to have discharged “thousands” of rounds of ammunition indiscriminately in Tivoli Gardens, over two days in May 1997. Tivoli Gardens is a densely populated area and garrison community; an inner city area dominated by one of the two major political parties, the Jamaica Labour Party (JLP).

The action followed the fatal shooting of Rohan Fraser by police officers. The death occurred in disputed circumstances and sparked demonstrations in Tivoli Gardens on 24 April 1997. During the demonstrations, residents constructed roadblocks and members of the police and Jamaican Defence Force established a strong presence in the area, with approximately 500 members of the security forces drafted in. The drafting was allegedly in response to reports that gunmen intended to target security forces in reprisal for Rohan Fraser’s killing or to search for suspects, guns, ammunition and drugs, or both.

In two days of shooting on 6-7 May 2001, the day before and

of Fraser's funeral, security forces claimed that they returned fire after being shot at by gunmen in the area. However, no guns or ammunition were recovered by the security forces and no suspected gunmen were arrested. No security personnel were hit by gunfire during the two days.

It is alleged that clashes occurred between members of the security forces who fired shots from the ground, from an armoured vehicle and a helicopter, and heavily armed residents who fired from the ground and high rise buildings. There are conflicting accounts about many of the incidents and Amnesty International is not in a position to assess which accounts are accurate. However, the organisation received information that on 6 May 1997, security forces opened fire on the home in which Rohan Fraser's body lay. It is reported that the house and his casket were hit by bullets.

Amnesty International has also received what it believes are undisputed reports that in the course of the two days many shots were fired into and through the roofs of houses inhabited by residents who were not engaged in the clashes; at least nine people were wounded by bullets and three women and a child were shot dead. The child was a six year old boy who was struck in the head by a bullet while standing near a window in his room, on 6 May 1997. On the morning of 7 May 1997 a woman was shot while returning home from a shop, and died from the wounds later that day. Two other women, who had reportedly attended the funeral of Rohan Fraser, were also shot and killed on 7 May 1997. One was killed on her way home from the funeral in the open courtyard next to the building

where she lived; the other was hit by a bullet which entered her home after she returned from Rohan Fraser's funeral.

In August 1998, an inquest jury found that no one was criminally responsible for the deaths of the boy or any of the women. The inquest heard evidence over a four-month period from 67 witnesses, including 31 soldiers and the investigating officer at the Office of Professional Responsibility (OPR).<sup>14</sup>

Many questions still remain unanswered, including the identities of those who fired the fatal shots and who fired from an army helicopter. Colonel John Simmonds, appointed head of the Jamaica Defence Force (JDF) in October 1998, attracted public attention when he initially denied that shots had been fired from the helicopter, a statement that was later retracted.

There have been allegations that the army and police force targeted Tivoli Gardens - not because of the threat to law and order posed by gunmen - but because it is a stronghold of the Jamaican Labour Party (JLP - the official opposition) and the constituency of the party's leader, Edward Seaga. These events occurred eight months before a general election, and at a time of political tension.

Amnesty International has previously urged the authorities to initiate an independent, impartial investigation into the events that

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<sup>14</sup> This police unit previously examined all police shootings until the creation of the Bureau of Special Investigations (BSI) in 1999. See "Investigations" below.

took place in Tivoli Gardens in April and May 1997.<sup>15</sup> The UN Human Rights Committee has also urged that an inquiry should be completed and its results published on the incident, as has the Jamaican Bar Association and leading politicians. To date, no such investigation has been undertaken.

### **No one is safe: the killing of bystanders**

“What happens sometimes, like in the case of taxi driver Bailey, is somewhat like the accidental bombing of civilian targets by NATO in Kosovo. But most of the time we kill criminals, not innocent people.” High-ranking police official - speaking upon the condition of anonymity - to an Associated Press journalist. Leroy Bailey was killed by police after they opened fire upon his cab without warning, in the alleged belief the taxi contained gunmen.

In a significant number of cases, police appear to have deliberately and unlawfully killed individuals who happened to be at the scene of attempted arrests.

### **Matthew Mullins**

**“Yuh wrong to kill de dread  
For Matthew a nuh gunman  
Officer, yuh wrong fi kill de Ras.”**  
Song at Matthew Mullin's funeral, sung by his cousin

On 27 July 2000, Autho Matthew Mullins, a 25 year old man and recent convert to Rastafarianism, was shot and killed near a

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<sup>15</sup>See Amnesty International - Jamaica: A summary of concerns - A briefing for the Human Rights Committee, AI Index AMR 38/07/97, October 1997, pp. 12-14.

Rastafarian community in a remote, hilly area outside Kingston by members of the Mobile Reserve and the Anti-Crime Task Force - units within the Jamaica Constabulary Force.

The police account stated that they had returned fire after three men, including Matthew Mullins had shot at them. Police stated that they subsequently discovered one of the men injured after a search of the area, and recovered a firearm from him.

However eyewitness claimed that he was detained and deliberately shot and killed, even though he was just a bystander at the arrest of a criminal suspect who was allegedly hiding in the area. In an account sent to a respected radio journalist, the suspect stated that he and Matthew Mullins had been detained and forced to lie on the ground. Matthew Mullins was then shot at point blank range in the chest, despite the fact that the suspect protested to police that Matthew Mullins was unknown to him.

Relatives told Amnesty International that a state pathologist had indicated that Matthew Mullins was shot at close range in the chest and leg areas. His clothes - crucial forensic evidence - were also allegedly discarded after the autopsy. Relatives were denied permission to view his body in the morgue, but were asked to sign papers indicating that he had died as a result of multiple gunshot wounds. An independent pathologist who performed a second post-mortem on the body noted the presence of three gunshot wounds: in the right thigh; the left thigh and the upper back, penetrating the chest cavity.

### *Janice Allen*

*Thirteen year old Janice Allen was shot and killed in Trench Town, Kingston, in April 2000.*

*Janice Allen was seen crouching behind a lamp post with her sister, as police started firing shots at a man on the other side of the street. Shortly after the man was made to lie on the ground and surrounded by police. It is alleged that at this point a police officer aimed directly at Janice Allen and fired. The police account of events alleges that Janice Allen was killed in cross-fire during a shoot-out between police and gunmen.*

*Amnesty International received an incomplete copy of the autopsy report from the government. However, a complete copy of the report was obtained from another source. Its findings are consistent with eye witness accounts, indicating that she had received one gunshot wound on the right side of her back, injuring her right lung.*

*According to witnesses to the incident, Janice Allen was refused medical attention by police and died while being driven to a hospital by members of the local community.*

*Janice Allen's mother was publicly criticised by the Deputy Commissioner of Police and Head of the BSI for refusing to allow for an autopsy to take place until she could have an independent doctor*

present. She was refused permission to view the autopsy herself at the morgue.

Janice Allen's 15 year old sister was initially denied permission to be accompanied by another adult when she attempted to deposit a statement at the BSI.

Amnesty International has been informed that a ruling by the DPP into the killing was still awaiting further investigation under the supervision of the civilian Police Public Complaints Authority.

### **Rasheed Williams**

On 12 October 1999, Rasheed Williams, a 23 year old mentally ill man, was fatally shot by police in Grants Pen, Kingston. The killing appears to have been deliberate.

Initial police accounts given to the media alleged that Williams formed part of a group of gunmen who fired upon police officer, "in the vicinity of the Grants Pen gully. The fire was returned and Williams was hit." However, witnesses alleged that police had been attempting to arrest and detain an unidentified man who ran away and starting shooting. A police officer was shot in the leg. Another policeman grabbed hold of Rasheed Williams' foot about a minute after the shooting stopped, asked him whether he was going to run away and then shot him in the chest. The police officer allegedly carried on shooting another two or three times after Rasheed Williams had fallen on his left side.

At the Coroner's inquiry into Rasheed Williams' death, one policeman initially testified that after Rasheed Williams was shot, he was arrested and charged with illegal possession of a firearm and shooting with intent. However, the statement was later retracted during further cross-examination.

Official forensic and ballistics investigation into the death was inadequate, but the findings of an independent pathologist who observed the state autopsy appear to confirm that Rasheed Williams was shot and killed deliberately. The pathologist recorded bullet entries to the abdomen, back and head. The bullet wound to the right side of the head was noted at a position of "half way between the right eye and right ear..." The pathologist also noted critical failings in the state autopsy. The cranium had not been fully opened and clothing was not examined.

Shortly after the shooting, police officers reportedly threw Rasheed Williams' body into the boot of an unmarked car and drove away. Police were also reportedly seen picking up a number of shells from the ground, and, despite police claims of a shoot-out, the only ballistics evidence reportedly presented at the Coroner's Inquiry was one fragment of a bullet. Police officers' guns were reportedly handed in for forensic analysis only after several days. Analysis reportedly revealed that not every gun was fired.

One of the eye witnesses to the killing subsequently refused to testify at the coroner's hearing which began on 13 February 2001.

*The witness had reportedly been visited on a number of occasions by police officers.*

## **TORTURE AND ILL-TREATMENT OF SUSPECTS IN CUSTODY**

*“A nuff tings di police do. Dem beat up mothers and fathers and you hear nut’n about it, nut’n. Dem beat dem, dem do dem all manner of evil. Dem just come inna yah an’ beat somebody, anybody, dem don’t care. Dem don’t care. Dem jus’ like animals.”*

*Kingston resident, August 2000*

*“I would like, not for my sake alone but for many more who are living in fear in this community, to get justice. Because we need justice. We are the people who are living in Trench Town. We just feel like we is like animal, anything can go on. Right now we are afraid of police.”*

*Trench Town resident, August 2000*

*Torture, as defined by international human rights standards, involves the intentional infliction of severe pain or suffering, whether mental or physical, for purposes such as obtaining a confession, intimidating or coercing a person, or for any reason based on discrimination of any kind.<sup>16</sup> Its occurrence in police custody in Jamaica is in violation of the state party’s obligations under international law, including article 5.2 of the IACHR and article 7 of the ICCPR. These provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and that all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.*

*Amnesty International has received numerous reports alleging torture and ill-treatment, usually following arrest and detention. Documented methods of torture have included beatings and burns, as*

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<sup>16</sup> UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.

well as the application of electric shocks to the body, attempted strangulation, mock executions and rape. Police have also failed to protect detainees, including children, from violence at the hands of other detainees. In some cases, they have even incited such violence.

The victims of torture and ill-treatment by the security forces are predominantly young, poor, black men from urban areas and criminal suspects. They also include women, children, members of the Rastafarian community and gay men.

### **Arbitrary arrest and detention**

The JCF Constabulary Force Act permits the arrest of persons "reasonably suspected of having committed a crime."

In practice, citizens continue to be arrested and detained arbitrarily - that is to say, in violation of international human rights law and standards. Incommunicado detention - detention without access to the outside world - and other forms of arbitrary arrest and detention facilitate torture and ill-treatment.

Despite legislative reforms outlined below, many individuals continue to be detained in custody without charge for excessively long periods *before being brought before a judicial authority* or released. Amnesty International continues to receive reports of such detention *varying from days to weeks and in some cases months*. This practice has existed for many years. In 1987, for example, the Human Rights Committee ruled that the detention of a man for a week *before being brought before a judicial authority* violated Jamaica's obligations under Article 9(3) of the ICCPR.<sup>17</sup> Article 9(3)

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<sup>17</sup> *McLawrence v Jamaica*, UN Doc. CCPR/C/60/D/702/1996, 29 September 1997, para 5.6.

*provides, inter alia, that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.*

Amnesty International has also received many reports - including from information received directly by the organization, as well as frequent media accounts - of individuals being held in incommunicado detention for extended periods, often of a week or more. *In such cases, individuals may be transferred between police stations, making it difficult for families and others to locate them.* Despite recent reforms extending the provision of legal assistance to those in police custody (described below), frequent reports of individuals denied access to attorneys are received, especially during interrogation. *Detainees may also be denied access to family and to medical assistance.*

*Such treatment violates international standards. The Inter-American Commission has ruled that the denial of access to legal representation during detention and/or investigation is a violation of the right to legal defence, even if such treatment is authorised by national law.<sup>18</sup> The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment clearly establish the right to receive visits and correspondence from relatives, and to communication with the outside world. Detainees, and their families or others whom they designate, are also entitled to receive information about their arrest and detention. Detainees must have the right to a medical examination upon entry into custody, as well as to medical assistance whenever*

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<sup>18</sup> Reporte Anual de la Comisión Interamericana - 1985-86, OEA/Ser. L/V/II.68., doc.8., rev.1, 1986, p.154, El Salvador.

required thereafter.<sup>19</sup> Torture and ill-treatment in police custody is likely to remain widespread as long as detainees can be denied access to lawyers during interrogation and to medical assistance and family.

### **Illegal detentions for the purposes of identification parades**

Human rights groups and others have for many years reported the frequent practice of unlawfully detaining individuals or groups of citizens, invariably young men from deprived, urban areas, for the holding of identification parades. Reports indicate that such individuals are frequently not given access to, or informed of their right of, legal assistance during their detention.

This practice continues despite amendments to legislation relating to the holding of identification parades. Under the Judicature (Resident Magistrates) Act, as amended, resident Magistrates are obliged to review the status of individuals detained in police custody for the purposes of holding identification parades every week. Magistrates are also obliged to ensure that adequate steps are being taken to hold identification parades promptly and have powers to order court appearance within 24 hours and to make orders, including for release, if deemed necessary. In practice, it has been suggested that the amendment has tended to give legitimacy to the police practice of detaining persons for a week or more for identification parades. Some lawyers have also reported

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<sup>19</sup> Principles 19, 16(1) and 24.

*that magistrates do not undertake such reviews regularly and may also fail to actually enter lock-ups to verify information from police as to detainees held therein.*

*The practice violates Jamaica's obligations under international law - including Article 9(1) of the ICCPR, which prohibits arbitrary detention or imprisonment, and stresses that all persons have the right to liberty.*

In 1997, the Commissioner reportedly disavowed the practice and ordered it discontinued, following complaints from the Jamaica Bar Association, amongst others. However, human rights organizations, lawyers and others attest that it continues.

*On 28 July 1999, 52 men were illegally searched and falsely imprisoned for the purpose of taking part in identification parades, after a joint police and military operation in Grants Town, Kingston. After being detained, they were allegedly made to stand facing a wall with their hands raised above their heads and their feet apart, before being forced to march into two army trucks in a line holding each other by the trousers or underwear. One of the men was allegedly kicked in the head by a soldier and another was forced to leave his house in his underpants. Another stated that he was forced to wait in the truck at gunpoint. The men were made to sit on the hot metal floor of the army truck for at least two hours, before being taken to Constant Spring police station. At the police station, the men were coerced to give fingerprints under the threat of incarceration. They were also illegally photographed and were interrogated about the identity of their friends and relatives. All the men, including one who was a diabetic and therefore needed food to regulate his condition, were denied food or water. At no time were they informed of the reason for their detention. All were released six and a half hours later without charge. A civil suit was still pending at the time of writing, but, according to the*

information received, no charges have been filed in relation to the incident, suggesting that there is a clear possibility of impunity in this case. The treatment the men received violated international law, including article 5.2 of the IACHR and article 7 of the ICCPR.

In January 2001, four men were reportedly detained incommunicado in Constant Spring Police Station for three days. Although the men alleged that they were informed that they had been detained to be put on an identification parade, in connection with a recent robbery in the area, all the men were subsequently released without charge upon the intervention of a lawyer. During their detention they were refused access to relatives and proper food, and were not informed of their right to legal assistance.

#### **“Disappearance”, ill-treatment and arbitrary detention of homeless people in Montego Bay**

On July 15 1999, an estimated 32 homeless people, many with mental health problems, were arbitrarily detained, ill-treated and forcibly *transported in a government truck, accompanied by a police escort, from the centre of Montego Bay to St. Elizabeth, some 60 miles away.*

*Accounts from the media and a subsequent Commission of Inquiry suggest that the individuals were tied with rope and that some were pepper-sprayed.<sup>20</sup> Those pepper-sprayed included a 67 year old woman, suffering from chronic schizophrenia.<sup>21</sup>*

#### **Allegations of “disappearances”**

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<sup>20</sup> Oleoresin Capsicum spray (commonly known as OC or Pepper spray) is an inflammatory agent derived from cayenne peppers. OC spray inflames the mucus membranes, causing closing of the eyes, coughing, gagging, shortness of breath and an acute burning sensation on the skin and inside the nose and mouth. Since the early 1990s, more than 60 people in the USA are reported to have died in police custody after being exposed to the spray.

<sup>21</sup> Mental health legislation in force at the time of the act granted constables powers to forcibly remove “those of unsound mind” for the purposes of treatment in a government clinic or hospital.

There were also allegations *that at least two individuals had "disappeared" as a result of the incident.*

In a letter to Amnesty International of 5 August 1999, the Prime Minister rejected the claim that two people had been missing since July 14 and were feared dead , *stating that*, "on the basis of the statements that have been collected so far, account has been given for all the persons who were forcibly removed. A physical search of the mudlake has been done by the Police, Alumina Partners of Jamaica and the Natural Resources Conservation Authority, who found no evidence to support the allegation that anyone had drowned."

*During the subsequent Commission of Inquiry however, at least three people gave evidence about the discovery of unidentified bodies in locations which were reasonably close to the area where the Commissioners held that the victims were left. One person, a security officer employed by a Bauxite company close to the site, testified to having actually seen one of the bodies. The officer testified that the body of a man had been found in a storage bin on 23 October 1999. Two others gave evidence citing reports suggesting that two other bodies had been found.*

*Those working with the homeless and a number of homeless people themselves, amongst others, have also testified that at least two previously homeless men have not been seen since the night of the*

forced removal. Both men were reportedly named by the Commission as amongst those who were removed.

The Commission of Inquiry's final report failed to even make reference to these findings, and it is understood that additional forensic or other evidence to identify the bodies was not requested. The Commission failed to identify accurately the numbers and names of all the victims; stating that they were only positively able to identify 25 people, although several witnesses stated that up to 32 persons were removed.

Amnesty International has serious concerns around the Commission of Inquiry's failure to investigate properly and report on these allegations. Failure to properly investigate may effectively guarantee impunity for perpetrators of human rights violations. Furthermore, if the allegations were confirmed, they may have amounted to forced "disappearance" - a serious crime under international law. The *Inter-American Declaration on the Forced Disappearance of Persons*<sup>22</sup> calls on states parties not to tolerate the forced "disappearance" of persons, to punish within their jurisdictions those persons who commit or attempt to commit the crime of forced "disappearance" of persons and their accomplices and accessories, in a manner commensurate with the gravity of the practice. These obligations include *articles 1 and 2 of the IACHR, which oblige state parties to guarantee and respect rights to all irrespective of status, and to adopt legislative or other measures to give effect to such rights, and article 6(1) of the ICCPR, which provides that every human being has the right to life - to be*

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<sup>22</sup> The Convention defines forced disappearance, under article 2, as the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

*protected by law, and that no-one should be arbitrarily deprived of their life.*

### *Initial refusal to hold an inquiry*

*The Prime Minister initially refused to convene an inquiry into the Montego Bay incident, citing lack of evidence. In his statement the Prime Minister also made reference to the parish council personnel and the Mayor of Montego Bay's denials of involvement in the incident. He urged a local human rights organisation to assist the police inquiry through provision of relevant information. This was criticised by the Farquharson Institute, who stated that the Prime Minister should not "place the burden of investigation upon the victims and the civil society."*<sup>23</sup>

*This decision was reversed however following sustained public pressure, and a three-member Commission with wide-ranging terms of reference<sup>24</sup> was convened in March, headed by the Head of the Police Public Complaints Authority. It heard from 73 witness during its two-month sitting, including the Deputy Leader of the Jamaica Labour Party (JLP opposition) and a Government Senator.*

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<sup>23</sup> *Amnesty International urged, in an open letter to Prime Minister Patterson on 3 August 1999, for an independent enquiry to examine the arbitrary detention, deprivation of liberty, use of force by police officers in the incident, and the unconfirmed deaths in custody.*

<sup>24</sup> *These were: to enquire into and report on the incident; to establish the identity of those who participated in and ordered the removal of persons; to make recommendations to prevent similar recurrences; to make recommendations for appropriate state redress and to make policy recommendations for the state and public sectors to improve treatment of homeless.*

### **The "Code of Silence": Failure to co-operate with the investigation and inquiry**

The possibility of undertaking a thorough, prompt and impartial investigation into the Montego Bay incident, in accordance with international standards, was adversely affected by the failure of police officers and others allegedly involved to co-operate fully with the investigation and subsequent Commission of Inquiry.

Investigators from the BSI, who overtook the investigation from the OPR at the request of the Prime Minister in February 2000, reported a "wall of silence" from police officers. Noting that, "not even one person ... admitted even a veiled level of culpability in this whole sordid affair",<sup>25</sup> the Commissioners found that "many witnesses who we think could have pointed us to the truth unabashedly lied to mislead us" and stated that investigations and findings had been limited by the existence of an effective code of silence amongst certain members of the police, who had "used the right to claim privilege as a shield against full and frank admissions and in a conspiracy to conceal the truth." Police officers gave contradictory evidence during the inquiry and blamed each other for the incident.

However the Commissioners themselves were also widely criticised for failing to fully implement their statutory powers to overcome this - despite having subpoenaed a number of police officers and other public servants - and for consequently failing to complete the enquiry in accordance with their own terms of

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<sup>25</sup> *The Commission of Inquiry Act to Enquire into the Forced Removal of Homeless Persons from Montego Bay to St. Elizabeth on the 15<sup>th</sup> Day of July, 1999*, page 114.

reference.<sup>26</sup>

Although Amnesty International received assurances from Prime Minister Patterson that measures had been put in place to ensure the protection of witnesses and victims from intimidation, the organisation received reports that a *number of victims of the incident, along with the police inspector charged in connection with the incident, received death threats.*<sup>27</sup>

Another police officer was charged in connection with the removal in January 2001. She had refused to answer most of the questions posed to her during the inquiry on the grounds of preventing self-incrimination. The Deputy DPP criticised the police at the opening of her trial in the absence of a key police witness who allegedly drove the escort vehicle.

### *Commission findings*

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<sup>26</sup> Under the Commissions of Enquiry Act 1873, section 10, these include the same power as Supreme Court judges to summon and examine witnesses, and to call for relevant books, documents and plans. Furthermore, subject to the same rights of privilege as in courts of law, those who refuse to appear, produce relevant evidence or answer the Commission's questions, or who wilfully obstruct or interrupt proceedings, may be fined or imprisoned (section 11).

<sup>27</sup> Jamaica Gleaner, 2 May 2000.

In September 2000, the Commission published its findings and recommendations. Recommendations included a re-sensitization of security forces on working with those who suffer from mental illness, as well as compensation packages for identified victims.<sup>28</sup>

The Prime Minister informed Amnesty International that he had instructed the Attorney General to advise as to breaches constitutional rights that may have occurred and on appropriate redress.<sup>29</sup>

In spite of the Prime Minister's commitment, none of the Commission's recommendations have so far been implemented and the government has refused requests to debate the report. At the time of writing, none of those identified had reportedly received compensation.

### **Failure to prosecute**

Charges against one police officer in connection with the forced removal were formally dropped by the DPP on 24 May 2000, in exchange for his testimony at the Commission of Inquiry. The charges had not been formally reinstated at the time of writing.

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<sup>28</sup> The package included appropriate accommodation, a reviewable monthly pay out of J\$20,000 and food, medical expenses and other support.

<sup>29</sup> He also stated that the use of chemical spray during the incident, if confirmed, would be a violation of policy and the subject of criminal prosecution.

*The trials of another policewoman and two other council employees - previously adjourned - were still pending at the time of writing.*

Although the DPP announced in January 2001 that he was not ruling out the possibility that more people could be indicted in connection with the Montego Bay street people incident, no other charges had been brought at the time of writing. The deputy DPP later cited lack of evidence as critical in the decision not to charge anyone else, including the four other police officers named in connection with the incident and those from other agencies implicated.

No disciplinary action is understood to have been brought so far against six police officers implicated. In January 2001 the Deputy DPP reported in the media that the Constabulary Force's administrative inquiry was still on-going.

### **Unanswered questions**

*Many questions still remain unanswered, including accurate information as to the numbers, identity and whereabouts of the victims; and the identification of all those involved in the actual removal.*

*Despite evidence heard that the need to remove homeless people from the streets had been discussed and minuted in council meetings, the charging of two low level local government employees (a refuse collector and council truck driver), as well as suggestions that the operation was connected to the holding of a G15 conference, no definitive answers were provided as to the extent of involvement of the St. James Parish Council in the removal.*

*No information was provided in the findings as to whether the*

incident prompted a review of the use of non-lethal force by police, including the use of chemical spray.<sup>30</sup>

### **Torture of criminal suspects and witnesses**

Amnesty International has received numerous reports of the torture and ill-treatment of alleged criminal suspects, usually in an attempt to elicit confessions.<sup>31</sup>

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<sup>30</sup> Amnesty International also urged the government review the use of non-lethal force in the incident, which appeared to contravene Provision 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials – “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. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result” - and requested a copy of the guidelines on the use of chemical spray by police officers and details of investigating incidents where these weapons are used.

<sup>31</sup> In violation of Articles 7 and 14(3)(g) of the ICCPR, article 5.2 of the American Convention on Human Rights, as well as other international treaties.

The Director of Public Prosecutions stated to the organization in August 2000 that a *voir dire* – a trial held within a trial to determine the admissibility of evidence – is conducted whenever an allegation of coercion arises in relation to a confession. However, Amnesty International has received information to suggest that evidence obtained as a result of torture has been used to convict individuals.

Those detained under suspicion of having committed serious criminal offences are at particular risk of ill-treatment. A number of people have been sentenced to death following trials at which allegations of torture and ill-treatment were raised and the United Nations Human Rights Committee (UNHRC) has considered many petitions involving individuals sentenced to death.<sup>32</sup>

Amnesty International received reports of the torture of one man detained for questioning in Negril Police Station in August 1997.<sup>33</sup> The man's confession formed part of the evidence that was used to obtain a conviction, resulting in a long prison term. Amnesty International reviewed independent medical reports which verified that an iron had been stamped at maximum heat onto the left side of his body, causing severe burns and removing the skin from his chest and abdomen. The man was also beaten severely, was verbally abused and was allegedly denied access to medical attention. The victim filed a complaint with the Ombudsman.<sup>34</sup> However, at the time of writing, no action had been taken on the case.

One man currently under sentence of death alleged that he had been tortured by police officers in a police lock-up in central Kingston in 1996, following his arrest and detention on a murder charge. On

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<sup>32</sup> For further information, see Amnesty International, *Jamaica - A Summary of Concerns: A Briefing for the Human Rights Committee*, AI index: AMR 38/07/97, pp.6-7.

<sup>33</sup> Although the victim has made an official complaint, he requested that Amnesty International not refer to him by name.

<sup>34</sup> The office of the Ombudsman has since become the Office of the Public Defender.

*the first two days of his trial he was allegedly beaten repeatedly with a strip of old tire and hit on the head with a baton. The torture continued until he agreed to incriminate himself in court and to sign a statement implicating three other men. In return he was told he would be sent abroad.*

*Individuals have also alleged that they have been tortured into giving false evidence used to convict others of capital crimes. One man, now in his twenties, stated that at the age of thirteen he was detained and tortured until he signed a statement implicating two men in a murder and testifying against six men accused of murder. He was beaten on the soles of his feet and given electric shocks, and was allegedly kept in detention for a period of several years.*

### **Torture and harassment of relatives**

Relatives of criminal suspects have been harassed by the police. Some have been detained, some have been ill-treated and some have been tortured.

In October 2000 a relative of an alleged criminal suspect - who was himself shot and killed by police shortly afterwards in an alleged extrajudicial execution - was reportedly detained for a week, interrogated and tortured by members of the Crime Management Unit. He was subsequently released without charge.

The victim was allegedly interrogated and beaten in an attempt to have him reveal the whereabouts of his relative. He was allegedly pepper-sprayed in both of his eyes. His ears were slapped so hard that his eardrums burst and bled. He was subjected to two mock executions when guns were placed near his head and "fired". He was kept handcuffed throughout his ordeal, resulting in wrist injuries. A medical report corroborated his account of his torture, indicating that he had been beaten all over his body. The right eardrum was perforated and bloody fluid was leaking from the right ear. Contusions and abrasions consistent with blunt trauma were present on the upper and lower back, arms, jaw, right knee, abdomen and ear, and there were marks on both wrists from handcuffing.

Throughout the week of his detention he was held in incommunicado detention and he was twice transferred to different police stations - a well-known means of ensuring that a detainee's whereabouts are hidden from their family.

There have been other allegations of torture by members of the Crime Management Unit. *In September 2000, media reports alleged that another man had been detained arbitrarily and ill-treated for three days in Barnett Street lock-up, Montego Bay, following a joint police-military operation reportedly led by the Acting Superintendent of the Unit. Media reports alleged that he had been repeatedly beaten on the head and stomach.*

## **Identity based violations**

### *Abuses against females*

Although the majority of allegations received concern men, Amnesty International has also received allegations of the ill-treatment and torture of women. Several women told the organisation that they had not made official complaints due to a fear of further ill-treatment, suggesting the likelihood that such cases may be under-reported.<sup>35</sup>

Although those detained during searches tend to be male, Amnesty International has also received allegations of the degrading treatment of women by male soldiers undertaking pat searches. The searching of women by male soldiers is inconsistent with international standards and has occurred in some instances despite the presence of female officers.<sup>36</sup> In

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<sup>35</sup> However, some women are prepared to make official complaints regarding ill-treatment and torture. The *Jamaica Gleaner* reported on 22 June 1998 that three police officers were prosecuted for rape and buggery ("Health risks to be considered in rape victim's case"). A 22-year old woman was awarded damages after being raped by two policemen and sodomized by a third in Central Police station in 1994. The officers were sentenced to 8 years with hard labour for buggery and rape.

<sup>36</sup> The United Nations Human Rights Committee has stated that to ensure the protection of the dignity of a person who is being searched by a state official, a body search should only be conducted by someone of the same gender. General Comment 16 to article 17 of the ICCPR, "*Compilation of General Comment and General Recommendations Adopted by Human Rights Treaty Bodies*," UN Document HRI/GEN/Rev.3, 15 August 1997.

some cases women appear to have been searched without apparent justification. Incidents of inappropriate sexual touching in ways that were designed to humiliate and to invade physical and mental integrity have been reported, including touching of the breast and genital areas.

There have been isolated reported instances of the rape of females, including children, by members of the security forces. Under international law, rape has been recognized as a form of torture.<sup>37</sup> In June 2000, a female sex-worker was detained and raped by two police officers in a deserted area in New Kingston. The officers allegedly threatened her and said that she would be released if she had sex with both men. The woman is understood to have refrained from making a complaint for fear of retaliation.

## Children

*Human rights groups have repeatedly documented the torture and*

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<sup>37</sup> In a report to the UN Commission on Human Rights, the UN Special Rapporteur on Torture documented the use of rape in custody as a method of torture, noting that "since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constituted an act of torture." UN Commission on Human Rights, UN Doc E/CN.4/1992/SR.21, 21 February 1992, para. 35.

Furthermore, consent to sexual acts does not constitute a valid defence under international law. The rules of the International criminal courts on the former Yugoslavia and Rwanda take note of the coercive reality of the custodial environment by providing that in cases of alleged sexual assault, consent is not allowed as a defence if the victim was subjected to or threatened with or has reason to fear violence, duress, detention or psychological oppression. See paragraph 35 of the report by the UN Special Rapporteur on Torture - Feb 21 1992; the ruling of the International Criminal Tribunal for the Former Yugoslavia in the case of *Prosecutor v Delacic et al.* and Rule 96 of the rules of procedure and evidence of the International Criminal Tribunal for the Former Yugoslavia.

It is hard to conceive of circumstances in which a sexual advance by an armed male captor to a female captive would not have coercive overtones. Other countries have accepted this and implemented laws forbidding all sexual contact between guards and prisoners. In many states of the USA for example, all forms of sexual contact between a guard and an inmate have been criminalized.

*International standards such as the UN Standard Minimum Rules for the Treatment of Prisoners also provide that* females in all forms of detention shall be attended and supervised only by women officers. The United Nations Special Rapporteur on Violence Against Women has called on all countries to ensure that these standards are fully implemented and to ensure that protective measures for women are guaranteed in all situations of custody, including police detention. *Report of the Special Rapporteur on Violence Against Women, E/CN.4/1998/54, Recommendation 1.*

ill-treatment of children in police lock-ups. Such practices violate Jamaica's obligations under international law as a state party to the UN Convention on the Rights of the Child.<sup>38</sup> The convention outlines special protections to children and prohibits the detention of children with adults.<sup>39</sup>

Children have been detained for long periods, often on minor charges and sometimes without charge, and have frequently been detained alongside adults, where they have been placed at risk of sexual and physical abuse from other inmates. In 1995 the UN Committee on the Rights of the Child expressed its concern at reports of lengthy pre-trial arrests and detention of children in police lock-ups.<sup>40</sup>

In July 1999 a report by the international human rights organisation Human Rights Watch, *Nobody's Children*, documented instances of torture and brutality against children, including severe beatings, mock executions and rape. Children were held in degrading conditions in police lock-ups, often without charge. Some were as young as 12. Those detained in lock-ups included children removed from their homes for their own safety, deemed "in need of care and protection", as well as those allegedly in conflict with the law.

One such case concerned the alleged rape of a 15 year old girl by a policeman. She was reportedly taken into custody as a child in need of care and protection. On her second night in detention a policeman asked her if she had ever had sex, tied her down

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<sup>38</sup>Signed by Jamaica on 26 January 1990 and ratified on 14 May 1991.

<sup>39</sup> Article 37(c). The Convention also specifies that children shall be deprived of their liberty only as a measure of last resort and for the shortest appropriate period.

<sup>40</sup> Concluding observations of the Committee on the Rights of the Child : Jamaica; 15/02/95; CRC/C/15/Add.32.; Eighth session; Consideration of Reports Submitted by States Parties under Article 44 of the Convention: paras 17 and 21. Held to be a violation of articles 37 and 40. The Committee recommended that professional groups, including the police, should be systematically trained on the provisions of the Convention.

with a belt, raped and beat her. She had to sleep on the concrete floor between cells as the cells were filled with adult men. She reported that she had lower abdominal pain and a burning sensation when she urinated. She received no medical attention.

The report also described how children were regularly denied access to legal representation, in violation of international standards and domestic obligations.<sup>41</sup> Some were unaware of their right to have a lawyer, whilst others had infrequent contact with court appointed attorneys, who frequently failed to appear in court sessions, resulting in children being remanded into police custody for further periods.<sup>42</sup>

In response to the report, the government of Jamaica undertook to investigate several allegations of brutality and to immediately remove all children under the age of 18 from adult police lock-ups for transfer to other appropriate children's facilities. In August 2000, Amnesty International was informed that juveniles were no longer allowed to be held in police lock-ups for longer than one week. Measures reportedly being taken to ensure the removal of all children from police lock-ups included improved co-ordination and reporting between the police and social services. Social workers were also reported to be conducting regular visits and unannounced 'spot-check' visits to lock-ups in every parish.<sup>43</sup>

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<sup>41</sup> Article 37(d) of the UN Convention on the Rights of the Child provides that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of their liberty before a court or other competent, independent and impartial tribunal, and to a prompt decision on such action.

<sup>42</sup> For further information see "*Nobody's Children: Jamaican Children in Police Detention and Government Institutions*", Human Rights Watch, New York, 1999. Available at <http://www.hrw.org/hrw/reports/1999/jamaica/>

<sup>43</sup> Interviews with the Ambassador for Children and the Head of the Department of Children's Services. Means of improved co-ordination reportedly included: the appointment of special personnel within the Department of Social Services to monitor such cases; the establishment a 24 hour telephone hot-line direct to social services for cases to be reported; weekly reports to be sent by the police to children's services on the status of children in lock-ups and the creation of a registry to maintain records regarding the arrest and detention of children.

However, nearly two years after this commitment was given, none of the cases of brutality documented in the report had yet been submitted to the Director of Public Prosecutions for a ruling according to the authorities and no disciplinary action has been taken against any officer involved. The authorities were unable to anticipate when internal police investigations were likely to be completed for forwarding to the Director of Public Prosecutions.<sup>44</sup>

Furthermore, information available to the organisation indicates that some children are still being detained alongside adults for long periods in police lock-ups in terrible conditions. Amnesty International interviewed one 17-year-old in Hunts Bay police lock-up in September 2000, who stated that he had been held for two months without charge and without access to legal or medical assistance. According to information from the authorities, no suitable alternative holding centres for children had yet become operative at the time of writing, despite efforts to assess several buildings for the purpose since 1999.

Amnesty International welcomes the government's stated commitments, but considers that further reforms are necessary to ensure the adherence by Jamaica to its international obligations.

### **Gay men**

Gay people in Jamaica, or those suspected of being gay, are routinely victims of ill-treatment and harassment by the police, and occasionally of torture. On 16 November 1996, four men were reportedly subjected to torture and incommunicado detention by police near Norman Manley Airport in Kingston. *The men were arrested and charged with gross indecency. Police refused to let two partially naked men get dressed, and drove all the men to a police post in the airport. There the men allege they were forced to removed all their clothes and were kept naked in public view until the next morning. An angry mob developed amidst alleged incitement by the police, who subjected the four to verbal humiliation and threats of beating. Some of the men were allegedly assaulted by members of the public during their subsequent transfer by policed to the Rape Unit. Once in the Rape Unit, the men allege they were sexually assaulted. From the rape unit they were transferred to Half Way Tree police lock-up, and then onto the Remand Center, where a guard informed fellow detainees of their charge. Here they were held in incommunicado detention, without access to family or lawyers, for varying periods. One man was allegedly held for 17 days, another for ten days and two men for*

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<sup>44</sup> Interview with the Ambassador for Children, Marjorie Taylor, August 2000.

five days. Upon their arrival, the men were placed in different cells where they were beaten by cell-mates. Police allegedly incited the violence and left their cells unlocked. *After the beatings, the men were put into one cell.*

Reports also indicate that the police have failed to protect gay people from violence in police detention or to assist victims or witnesses of homophobic crimes. In some cases, reporting incidents of homophobic violence to the authorities has resulted in further victimization and ill-treatment at the hands of the police. In June 2000, a man was allegedly threatened with being taken to the 'rape unit' whilst detained at the Half Way Tree police station. He had been taken to the station by police after summoning help following a homophobic attack. In April 2000, a man was allegedly refused police protection which he requested after he received death threats. The man fled his home after his partner was chased by a mob into a church and killed.

Most reports received by Amnesty International are anecdotal or anonymous, due to individuals' fears of reprisals or retaliation. The gay and lesbian community in Jamaica face extreme prejudice. Sexual acts in private between consenting male adults remain criminalized and punishable by imprisonment and hard labour.<sup>45</sup> Such laws have been vigorously publically defended by the government. Amnesty International believes that the retention of laws which treat gay men or lesbians as criminals lends support to a climate of prejudice in which discrimination, physical attacks and other abuses against people who are or are believed to be gay are likely to occur.

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<sup>45</sup>Sections 76-82 of the Offences Against the Person Act. Article 76 punishes the "abominable crime of buggery" by up to ten years' imprisonment with hard labour. Article 79 punishes, among other things, men who commit any act of gross indecency with another male in public or private by a term of imprisonment of up to two years, with or without hard labour. Section 24 of the Constitution of Jamaica does not prohibit discrimination on the basis of sex. Section 24(7) permits restrictions of a discriminatory character with regard to the right to privacy.

Amnesty International considers that the existence of such laws violate the prohibition against discrimination, the right to privacy and the right to equal protection under the law enshrined, respectively, in Articles 2(1), 17 and 26 of the ICCPR.

Amnesty International does not have information about recent successful prosecutions for consensual homosexual activity in private in Jamaica. However, if a person were to be imprisoned under these provisions as a result of consensual sexual activity between adults conducted in private, the organisation would regard him or her as a prisoner of conscience, imprisoned in violation of Articles 2, 17 and 26 of the ICCPR, and would call for the immediate and unconditional release of the individual concerned. For more information, see, Amnesty International, *Jamaica - A Summary of Concerns: A Briefing for the Human Rights Committee*, AI index: AMR 38/07/97.

Sodomy laws can also result in AIDS awareness workers being detained and ill-treated on suspicion of promoting homosexual relations.<sup>46</sup> On 5 May 2000, a nurse was detained while distributing condoms to sex workers in Jamaica, despite carrying identification authorizing him to carry out his work. He was held by police for nine hours, denied access to his family or to a lawyer, interrogated and verbally abused before being released without charge. He spoke to Amnesty International on condition of anonymity and has been unwilling to make a formal complaint for fear of retaliation.

### **Violations by the security forces during emergency crime measures**

In the last few years, the government has once again resorted to deploying the army in joint civilian law enforcement operations with the police, on grounds of maintaining national security and fighting crime.

In July 1999, the government established 'Operation Intrepid' in 15 areas of Kingston. The operation authorised the imposition of a wide variety of measures, including dawn-to-dusk curfews, cordons and roadblocks, and spot searches. Use of similar emergency anti-crime measures lasting from 12-48 hours has remained high since the launch of 'Operation Intrepid'.<sup>47</sup> According to reported figures, by April 2000 there had been a total of 5,934 road blocks, 10,824 joint foot patrols, 5,409 joint army/police mobile patrols, 3,242 snap raids, 213 cordon and searches and 105 curfews imposed in such areas. After a temporary reduction in curfew levels in January 2000, these were restored to previous levels in April 2000, following disturbances in Mountain View, Kingston. More recently, the newly appointed head of the Crime Management Unit announced in September 2000 that such measures would be intensified.

National human rights organisations, lawyers and others have reported patterns of harassment and ill-treatment of individuals, predominantly young black men, by members of the security forces during *curfews, searches and other emergency*

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<sup>46</sup> The UN Human Rights Committee has noted that "sodomy" laws are an obstacle to HIV prevention work, *See UN Human Rights Committee, Toonen v. Australia.*

<sup>47</sup> The military has a history of involvement in civilian law enforcement in Jamaica. For example, on 2 October 1966, the government called out several hundred military and police personnel when a state of emergency was declared. For more information, see, *Government, the Police and Personal Freedom*, Jamaica Council for Human Rights, Kingston September 1967, pp. 4. Previously, the Suppression of Crimes Act gave soldiers the power of arrest when in joint operations with the police.

measures, including beatings and verbal threats of violence and detention without charge for periods ranging from hours to days. The frequency with which extraordinary measures are employed under special powers has also led to residents in many areas describing conditions of constant fear and intimidation at the hands of the security forces.

The practice of using emergency laws to grant the security forces extremely broad powers has existed in Jamaica for over thirty years. On 23 March 1994, the government repealed the Suppression of Crimes Act. The act allowed police the power to detain people without charge indefinitely on suspicion of intending to commit a crime, to search premises, vehicles and persons without warrants and to impose cordons and curfews. Soldiers were granted the power of arrest in joint operations with the police. The act also placed a presumption in favour of the security forces having acted lawfully where allegations of the unlawful exercise of authority arose, unless

victims could prove the contrary. Although originally introduced under emergency legislation, the act's emergency provisions were extended every year. Throughout the twenty years of its existence, the act appeared to provoke numerous complaints of torture and ill-treatment. At the time of repeal, the government

On a rainy morning in September 2000, a group of approximately 10 people, including a delegation from Amnesty International, were in Grants Park, Kingston. The delegation was there to meet with the Prime Minister in September 2000 to discuss the government's plans to take inter-communal violence the plagues their lives. As the 10 stand discussing police violence, four heavily armed police officers enter the compound, guns held ready, and work towards the group. This everyday occurrence in Kingston is only different as the group contains the Secretary General of Amnesty International, visiting the area to hear first hand of the problems faced by those living in such a deprived area. Once the police are aware of the Secretary General's presence, they leave. For the Amnesty International delegation this was an unnerving experience. For the residents of Kingston it was nothing new. The residents tell the delegation that the Secretary General's presence probably prevented the police confronting and abusing them.

acknowledged that the act had led to human rights abuses.<sup>48</sup>

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<sup>48</sup> The Minister of National Security, K D Knight, stated, "Certain provisions of this Act have generated widespread criticism because they have enabled the police to abuse the civil rights of people. This abuse has served over the years to alienate the police from the people and has contributed to the lack of confidence in the police" See "*Crime Act to be repealed*", Jamaica Gleaner, 16 July 1993.

Nevertheless, the replacement 'Act to Amend the Constabulary Force Act', together with the 'Judicature (Resident Magistrates) Act' granted similarly powers.<sup>49</sup> The amended Constabulary Force Act authorises the imposition of extreme restrictions on freedom of movement in the form of cordons and curfews, under the special measures granted to the Commissioner of Police for emergency situations, thus perpetuating the most oppressive parts of the Suppression of Crimes Act. The act also grants similarly broad powers of arrest, search and detention.<sup>50</sup>

The international prohibition on torture and ill-treatment applies even when a country is facing exceptional circumstances, such as *internal political instability or any other public emergency*.<sup>51</sup>

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<sup>49</sup> The act was criticized for this reason by MPs and human rights activists, including the Jamaica Council for Human Rights, Lloyd Barnett, Hugh Small and Delroy Chuck, amongst others. See for example, *Security Minister Says 1974 Legislation Ineffectual*, Caribbean and Central American Report, 19 May 1994 and *The Legacy of the Crime Act*, Jamaica Gleaner, 30 March 1994.

<sup>50</sup> Jamaica Constabulary Force Act, section 16, "Any warrant lawfully issued by a Justice ... may be executed by any Constable at any time notwithstanding that the warrant is not in his possession at that time but the warrant shall, on the demand of the person apprehended, be shown to him as soon as practicable after arrest."

<sup>51</sup> UN Convention Against Torture, article 2.

The many critics of the practice of deploying the army to assist the police include high-ranking police officers in other Caribbean jurisdictions. In May 2000, Orville Durant, former Commissioner of the Royal Barbados Police Force, denounced joint patrols between this force and the Barbados Defence Force. Calling for increased public support for the police, he noted that, “the police are trained to relate to the public and civil constituents; the Defence Force is trained to meet the demands of the military public.”<sup>52</sup> Members of the Jamaica Defence Force have also recently been implicated in human rights violations against prisoners. In May 2000, disturbances in St. Catherine’s District prison culminated in a mass-beating of an estimated 300 prisoners by soldiers over a three-day period, during which at least two inmates were shot. Soldiers allegedly used batons, rifles, baseball bats, irons and electrical wire to inflict injuries that included fractured skulls and limbs. There were also allegations of attempted asphyxiation. Many of those injured were denied medical attention by soldiers for days after the incident until the intervention of the prison doctor. After a Commission of Inquiry was established to look into these incidents, Amnesty International received further reports that several inmates who testified at the inquiry were subjected to serious retaliatory violence by soldiers who had remained in their posts pending the outcome of investigations. One prisoner is reportedly suffering from continual epileptic fits as a result.

In September 2000, there were further credible allegations that soldiers had raped and sexually assaulted a number of female prisoners in Fort Augusta Prison, after 24 soldiers were assigned to the prison to replace warders. A number of the women allegedly became pregnant as a result. Amnesty International wrote to the authorities, calling for a prompt, thorough and independent investigation into the allegations, with sanctions brought against any of those found to have committed such offences. The organisation also called for steps to be taken to review the assignment of male guards to female prisons, in line with international standards. At the time of writing, the government had not responded.

### *Unauthorised and extended curfews*

*By law, all curfew orders must be signed by the Minister of National Security and Justice before being enforced.<sup>53</sup> However, Amnesty International has received information to suggest that in some cases, curfew orders may have been imposed without authorisation.*

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<sup>52</sup> Barbados Nation, *Army Fall Out “Durant and Haynes not happy with role of BDF”*, 9 May 2000.

<sup>53</sup> Constabulary Force Act 1997, section 50A (3) (b)

The allegations include the curfew order for Olympic Gardens, imposed in August 1999. It was during this curfew that Michael Gayle (see below), a mentally ill young man, was stopped at a roadblock and beaten to death by soldiers and police. Lawyers representing the family requested a copy of the curfew order for Olympic Gardens shortly after Gayle's death. However, they did not receive a copy of the order from the Ministry of National Security and Justice until 21 December 1999 - too late to be included as evidence in the coroner's inquiry. According to the Ministry of National Security, this was due to a "delivery problem" within the Ministry.

### **The killing of Michael Gayle**

Michael Gayle, a 26-year-old-man who suffered from mental health problems, was beaten to death by at least fourteen members of the security forces - soldiers and police - on 21 August 1999, after he was detained at a road-block in Kingston following the imposition of a curfew in Olympic Gardens. Nearly two years later, the authorities have yet to charge or discipline anyone in connection with the killing.<sup>54</sup>

Gayle's account of the incident, given before he died two days later, indicated that police and army officers had attacked him, kicking him in the back and hitting him with

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<sup>54</sup> For further information, see *Amnesty International - Jamaica: The killing of Michael Gayle: Authorities Yet to Hold Police and Army Officers Accountable*, AI index AMR 38/02/00, available on AI's website at [www.amnesty.org](http://www.amnesty.org)

batons and gun butts, after he was refused permission to cross the security barrier. His mother, Jennie Cameron, who arrived at the security barrier shortly afterwards, claimed she had to “beg for mercy” to prevent her son receiving further beatings: “I told them my son is sick, that he is of unsound mind but a [police] officer told me that I was obstructing justice. I saw Michael bleeding from his ear and face and he was beaten all over his body. I think his ribs were broken.” The death certificate issued after the post mortem gave the cause of death as peritonitis due to the traumatic rupture of the stomach; a finding consistent with the eyewitness accounts of the attack upon Gayle.

The group Jamaicans for Justice orchestrated a sustained campaign for a coroner's inquest to be held into the killing. An inquest was convened in December 2000 and the jury returned a formal 10-1 verdict of manslaughter on 22 December. The jury found that Gayle was “excessively beaten by joint security forces” and recommended that all army and police personnel manning the roadblock that night be charged.

On 14 March 2000, the DPP announced that he did not intend to file charges against any of the security officers present at the roadblock on the grounds that, based on the available evidence, he was unable to identify or bring a charge against those individuals who caused the death. As detailed on page 60, the refusal of army and police officers to co-operate in the investigation into Gayle's death was held to be one of the major factors precluding the possibility of charges being laid for the killing. The decision was criticised by opposition politicians as showing “the weaknesses in our machinery of justice”. The attorney representing Gayle's family also stated: “This ruling, and the way in which it was handled, will cause the people of Jamaica to lose faith in justice in this country. The police have become instruments of murder and they will feel that they can do it again if they are allowed to get away [with it] in cases like this.”<sup>55</sup>

The investigation was subsequently reopened after a request from the Minister for National Security and Justice to the Commissioner of Police. In a statement to parliament on 14 March 2000 the Minister stated that: “whatever the legal niceties are, the public dissatisfaction is real. At the end of the day, the complaint is going to boil down to the investigation. The ruling of the DPP at this stage does not close the matter. In these

<sup>55</sup> Attorney Hugh Small, QC, quoted in the *Jamaica Observer*, 14 March 2000.

circumstances, further investigation is needed to be done without delay.” According to media reports, the Police Commissioner held talks with the Chief of Staff of the JDF, Major General John Simmonds, to ensure the full cooperation of the army in conducting the investigation.

In September 2000, Amnesty International was informed by the DPP that he was unaware of the current status of the investigation and that no disciplinary or criminal charges had yet been laid. The DPP was unable to give an estimate of when the investigations would be completed and it is further understood that the reopened police inquiry recommended closure of the case, due to lack of evidence. *In January 2001, the Public Defender – an office established to assist Jamaicans in obtaining redress for the infringement of constitutional rights – criticised defence lawyers who had criticised the decision not to prosecute, reportedly stating that there was no time limit on prosecution.*

### **Conditions in police lock-ups**

*For many years, conditions in police lock-ups in Jamaica have amounted to cruel, inhuman and degrading treatment. The severity of such conditions has resulted in several deaths.*

*In October 1992, three men suffocated to death after being held alongside sixteen other men for two days in a cell measuring eight by seven feet in Constant Spring Lock-up. The concrete cell lacked adequate ventilation, with an air space of about one inch under the door, no windows and metal plates welded over the cell door (with about forty small holes) further restricting air flow. All the men were denied water and food and were forced to drink perspiration and urine to survive. They were denied visits during their incarceration. Three police officers were tried and acquitted for manslaughter in relation to the incident. Twelve of the detainees brought civil actions and were each awarded roughly J\$200,000*

(approximately US \$5,500). In November 1999, the government accepted liability for the death of one of the detainees, Agana Barrett, in an out-of-court settlement. To Amnesty International's knowledge, no successful prosecutions or disciplinary action has resulted from the incident.

The deaths led to attempts at reform. In 1998, the Commissioner of Police directed that lock-ups should contain no more detainees than they were designed to hold and that police should increase their discretion in the granting of bail, partly as a means of relieving overcrowding. A cross-party parliamentary committee also proposed measures to improve the conditions under which those in police custody were held. The Committee recommended increased responsibilities for Justices of the Peace (a voluntary lay magistrate) in making weekly inspection visits to check on the status of individuals being detained, providing bail and examining the condition of cells.

However, none of the proposed reforms have reportedly been implemented and conditions continue to fall well below international minimum standards, in many cases constituting cruel, inhuman and degrading treatment. Detainees are still in some instances being placed at risk of death or physical injury as a result. Police lock-ups continue to suffer from severe over-crowding, aggravated by laws which grant the police wide discretionary power to control the granting of bail. Reports indicate that they frequently operate at three times capacity or more, with between 11 and 14 persons being held in cells typically measuring 8 by 7 feet. Detainees frequently have no access to bedding material and are forced to sleep on newspaper; adequate food, water, or proper sanitation are also denied.

Two examples are typical of the reports that Amnesty International receives. In September 2000, an Amnesty International delegation visited Hunts Bay police station, Kingston. The lock-up was originally built for 28, but held 99 on the day of the visit. The overcrowding forced detainees to sleep in shifts and prevented them from moving about, sitting or lying down freely. Detainees were held in complete darkness, in cells without sanitation, and reported being denied access to medical attention and adequate food.

One man, detained in Withorn Police Station in May 2000, described how poor ventilation and heat within the cell led to problems breathing. Conditions in the cell were described as similar to those of Constant Spring in 1994 - the cell had just two small air vents - one in the door and one in the back of the wall. It held seven men, despite being designed for two and measured seven feet by nine. Detainees were held in darkness in a cell covered in urine and infested by cockroaches, mosquitoes and red ants, and took turns sleeping on the concrete floor. Food and bathing facilities were also inadequate.

### **Failure of the law to provide adequate protection against ill-treatment of suspects in police custody**

Reports of abuses have continued despite the introduction of laws to ensure greater protection of the rights of detainees in custody. Articles 1, 2 and 5.2 of the American Convention, to which Jamaica is a state

party, underline the obligation on states to respect the rights and liberties provided in the Convention, including freedom from torture, and to adopt all necessary measures, whether legislative or otherwise, to make such rights effective. To prevent torture, states parties to the Convention are therefore under a legal obligation to take such administrative, judicial or other measures, in addition to legislating. Through its failure to ensure that this is so, Jamaica is thus violating its international obligations.

*The Judicature Act, amended following the deaths of several detainees in Constant Spring lock-up (described below), requires magistrates to review on a weekly basis the status of all those in police custody. Each Parish also has a designated custody officer, obliged to check records relating to those in custody and inform magistrates of detained persons every week. Crucially, the officer is also obliged to inform detainees' relatives and friends of their incarceration.*

*The Legal Aid Act 1997 expanded legal aid to include those charged with any offence, except those charged under the Dangerous Drugs Act or Money Laundering Act. Detainees have the right to legal assistance at all stages from the time of detention or arrest until the first appearance in court.<sup>56</sup> Corresponding regulations established a duty counsel scheme, to provide legal assistance to all those detained or accused.<sup>57</sup>*

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<sup>56</sup> The Legal Aid Act followed the repeal of the Poor Prisoners' Defence Act. Under this act, legal aid was not available from the time of arrest. In 1997, the UN Human Rights Committee noted that the adequate remuneration of lawyers acting under the Poor Prisoners' Defence Act at all stages of arrest and subsequent proceedings would "greatly assist in providing a proper defence of clients in a proper manner." CCPR/C/61/CMT/JAM/3; HUMAN RIGHTS COMMITTEE; Sixty-first session, Geneva, 20 October - 7 November 1997, Consideration of reports submitted by States parties under article 40 of the Covenant, JAMAICA (Concluding Observations, 14).

<sup>57</sup> The Legal Aid Act (Act 36 of 1997), The Legal Aid Regulations, 1999, part IV. 9-15. The duty counsel scheme became operational on 1 May 2000.

Previously, police officers were under no legal obligation to inform those arrested of their right to legal representation and detainees had no right to legal aid – but the regulations also oblige police officers to advise people of and provide access to legal aid, and to advertise the legal aid scheme within police stations.<sup>58</sup>

Amnesty International welcomes these measures. However, the organisation still considers that the legal framework which governs the treatment of those under arrest and detention fails to provide adequate protections and may even facilitate the perpetration of human rights abuses.

There are no statutory limitations to ensure that individuals are promptly informed of the reason for their arrest and detention and brought before a judicial authority.<sup>59</sup> The Inter-American Commission on Human Rights has stated that if a court is informed of a detention after significant delay, the rights of a detainee are not protected. Both the Commission and the Human Rights Committee

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<sup>58</sup> The Executive Director of the Legal Aid Council informed Amnesty International in August 2000 that, at that time, 95 of 165 police stations on the island were currently covered by the duty counsel scheme. *The Council has also visited police headquarters in all 12 parishes, to provide training on these duties.* The Legal Aid Council was established to administer legal assistance.

<sup>59</sup> For example the Constitution provides for the right to be informed of reasons for arrest and detention “as soon as reasonably practicable”; for the right to a trial “within a reasonable time” and for the right of those arrested or detained for the execution of a lawful warrant or upon reasonable suspicion of having committed or being about to commit a criminal offence, if not released, to be brought before the court “without delay” and, if the case is not tried within a “reasonable time” are to be granted bail without conditions. See sections 15(2-3) and 20 (1-2) and 6. The Constabulary Force Act (section 15) states only that persons arrested without a warrant are to be brought before a Justice “forthwith”, for a decision on custody.

have ruled that detention without being brought before a judge of between 48 hours and a week was excessively long.<sup>60</sup>

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<sup>60</sup> Report of the HRC, vol. 1, (A/45/40), 1990, para. 333, Federal Republic of Germany; *Brogan et al v. United Kingdom*, 29 November 1988, 145b Ser. A33 at 62.

Although written records are required to be kept on all those in custody at police lock-ups, and despite the appointment of special officers to oversee custody, reports received by the Amnesty International indicate that written custody records systematically omit details, such as time and place of interrogations, and the identity of the interrogator, considered crucial to prevent ill-treatment.<sup>61</sup> The UN Human Rights Committee recommends that, to prevent incommunicado detention and protect detainees' rights, registers should record: the names of those in detention; places of detention; names of persons responsible for detention; and the time and place of interrogations. This register should be available and accessible to all concerned, including relatives and friends, and should be available for judicial proceedings.<sup>62</sup>

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<sup>61</sup> Source: Interview with Executive Director, Legal Aid Council, February 2001.

<sup>62</sup> UN Human Rights Committee, *General Comment 20 concerning prohibition of torture and cruel treatment or punishment (Article 7)*, 10/04/92, point 11.

## INVESTIGATION AND PROSECUTION

*The authorities in Jamaica have consistently failed to hold those guilty of human rights violations accountable. The vast majority of incidents are not investigated promptly, thoroughly and impartially, in accordance with international standards, such as the UN Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The UN Economic and Social Council (ECOSOC) has recommended that these principles should be taken into account and respected by Governments within the framework of their national legislation and practices.<sup>63</sup>*

This situation has continued despite well-developed institutional mechanisms to investigate alleged abuses, including reforms made in recent years to the manner in which police shootings and other allegations of ill-treatment are investigated.

### International standards on investigations

*International standards, including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, provide that when there is a death in disputed circumstances involving the use of force by law enforcement officials, authorities are required to initiate an independent and impartial investigation.*

*Investigations should examine, among other things, whether the use of force by law enforcement officials was in accordance with the (UN) Basic Principles on the Use of Force and Firearms by Law*

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<sup>63</sup> Resolution 1989/65, paragraph 1.

*Enforcement Officials.* This in accordance with Principle 18 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the opinion of the Human Rights Committee.<sup>64</sup>

In the case of deaths, including alleged extrajudicial executions, the purpose of such investigations is to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. Investigations must include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses.

Standards also provide that governments are to maintain investigative offices to undertake such inquiries. Investigators must have all the necessary budgetary and technical resources for effective investigation, and must be granted the authority to obtain all the information necessary to the inquiry, to oblige officials allegedly involved and witnesses to appear and testify, and to demand the production of evidence.

Written reports on the methods and findings of such investigations are also to be made within a reasonable period of time. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence, as well as conclusions and recommendations based on findings of fact and on applicable law. Those responsible are to be

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<sup>64</sup> For example, Bautista v. Colombia, UN Doc: CCPR/C/55/D/563/1993 at para 8.6 and Chaparro et al v. Colombia, UN Doc: CCPR/C/60/D/612/1995 at para 8.8.

*brought to justice and victims, their families and dependents granted fair and adequate compensation within a reasonable period of time.*

### **Internal investigations into police misconduct**

*Two units within the JCF are responsible for investigating alleged abuses by the police. Both are accountable to the Commissioner of Police. Members of the public may deposit complaints with either unit, or with the civilian oversight body, the Police Public Complaints Authority (PPCA). Their completed reports are sent to the Director of Public Prosecutions, for a ruling on whether criminal or disciplinary proceedings, or a coroner's inquest, should follow.<sup>65</sup>*

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<sup>65</sup> Complaints on fatalities are to be sent to the DPP after the initial deposition of the complaint, under s. 14.(3)(d) of the Police Public Complaints Act. The act states that it is the Commissioner who decides whether to refer a complaint on to the DPP, but that if there is any indication of criminal conduct, the complaint shall be referred to the DPP beforehand for advice and other direction as necessary.

### ***Bureau of Special Investigations***

The police department's Bureau of Special Investigations (BSI)<sup>66</sup> was established in May 1999 with the intention of taking over investigations of all police shootings from the Office of Professional Responsibility. It became operational on 1 July 1999. Headed by the Deputy Commissioner of Police, its officers are intended to work under the close supervision of the Director of Public Prosecutions.

Government authorities and the DPP maintain that the quality of investigations has improved since the BSI was established. The DPP told Amnesty International that there had been a general reduction in the time taken for cases to be investigated and forwarded to his office for a ruling; he also said fewer files needed to be returned to the police for further investigation, because of lack of evidence or information.

Amnesty International remains concerned that, despite the authorities' assurances to the contrary, the quality of investigations still fails to conform in many respects to international standards.

Incidents are still not investigated promptly, impartially and thoroughly. The collection and analysis of forensic evidence remain

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<sup>66</sup> Investigations into police shootings were previously undertaken by the Office of Professional Responsibility. Defending the decision not to establish a civilian body, Prime Minister Patterson reportedly said that, "training and establishing a civilian group would be tantamount to establishing another police force." The Prime Minister also suggested that the creation of the BSI was designed to bring about closer collaboration between internal police investigations and prosecutors and to improve the manner in which police investigations are carried out, stating, "this new procedure will ensure that investigations are timely, thorough and seen to be impartial." "New approach to probing report against cops" *Jamaica Gleaner* 6 May 1999.

cause for particular concern. The DPP informed the organisation that since the BSI became operational, no files had been returned because of a lack of forensic evidence. However, as detailed below, forensic investigation, including post mortems, remains wholly inadequate in most cases.

*It is commonly reported that police investigators arrive at the scene of shootings after considerable delays - of hours, days or, in several cases reported to Amnesty International, even weeks. Investigators have failed to undertake thorough examinations at the scenes of many police shootings. This failure to arrive promptly at incidents provides further opportunity for crucial evidence to be contaminated or removed, as described below.*

For example, Amnesty International was informed that investigators did not arrive at the scene of the shooting of William Richards until nearly 12 hours after it took place. By the time they arrived, the body had been removed by police involved in the shooting, and other forensics and ballistic evidence had been systematically contaminated. In the case of Delroy Lewis, it was reported that investigators only arrived at the scene of the shooting one week after it occurred. During their visit, they failed to even view the part of the property where the shooting was alleged to have taken place.

*The head of the BSI told Amnesty International that the lack of resources, including under-staffing, is a major factor impeding an adequate response to the volume of complaints received.*

### ***Office of Professional Responsibility***

*All other complaints of misconducts concerning the police that do not involve firearms are investigated by the Complaints Division, a unit within the Office of Professional Responsibility. Complaints can be made directly to the Complaints Division or to the Police Public*

*Complaints Authority – a civilian oversight authority.*

*This office has been repeatedly criticised by human rights organisations, lawyers and others as lacking impartiality and thoroughness.*

*Amnesty International spoke to many individuals who stated that investigators had attempted to intimidate them to prevent deposition of complaints. In one case, police investigators initially refused a 15-year old witness permission to deposit a statement in the presence of an adult. She was only allowed to make the complaint in the presence of an adult when she returned with a lawyer. There have also been complaints that the OPR has failed to follow the formal complaints procedure to deal with serious complaints. In one case, a woman alleged that officers recording her complaint of excessive force and harassment told her that they would get the officer concerned to the OPR office “to talk to him about his behaviour.”*

*Police investigators frequently lack the specialist training and resources necessary to undertake adequate investigation. For example, the officer responsible for leading the police investigation into the death of Michael Gayle had been in the JCF for 19 years but had no formal training as a detective. He had been in the investigations department of the police for four years but had not received any on-the-job training. The two police constables assisting him in his investigations had also not received any training in detective work.*

*Public confidence in the complaint process is further undermined by the secrecy of police investigations, as described below.*

### **Independent civilian oversight - Police Public Complaints Authority**

*Amnesty International is extremely concerned that the PPCA has neglected to focus on the most serious alleged violations. In a period which saw over 150 killings by police shooting - many alleged to be extrajudicial executions - the major concern cited by the PPCA in its last published Annual Report, regarding inadequacies of police investigation, was the non-return of detainees' property.*

*The Police Public Complaints Authority is an independent civilian monitoring body, with final oversight responsibility for the investigation of complaints against the police. Established by law in 1993, it is headed by a retired Judge, assisted by a staff of civilian personnel. Its responsibilities include supervising, reviewing and reporting on investigations by the JCF into all complaints regarding death or serious injury, and others as appropriate. It is also empowered to make recommendations to parliament regarding handling of complaints by police and to initiate its own direct investigations. It may comment on both the disciplinary and the criminal aspects of investigations. Any complaint made to the police complaints division must by law be copied to the PPCA.*

*However, there remains a widespread lack of public confidence in the credibility, independence and transparency of the PPCA.*

*Disciplinary and criminal proceedings against officers alleged to have committed abuses are frequently hampered through a lack of evidence, with officers unwilling to provide information. The PPCA has*

stated that a major factor preventing the full and thorough investigation and supervision of complaints is the failure by police who are the subject of complaints to respond promptly to requests for information from the PPCA. Nevertheless, *the failure by the PPCA to make full use of its powers appears to contribute to the inadequacy of investigations.* The Chairperson of the PPCA himself informed Amnesty International that the PPCA's statutory powers to search premises or review documentation (after first obtaining a warrant via a Justice of the Peace) are rarely deployed and that independent investigations are rarely initiated.

*There is also public belief that the PPCA lacks the political will necessary to confront and challenge impunity. Amnesty International is extremely concerned that the PPCA has neglected to focus its attention on the most serious alleged violations. In a period which saw over 140 police killings through shooting for example - many alleged to be extrajudicial executions - the major concern cited by the PPCA in its last published Annual Report regarding inadequacies of police investigation was the non-return of detainees' property.*

*The PPCA chairman stated in an interview with Amnesty International that he did not consider it appropriate or possible to hold the Jamaican police accountable to the same standards as other countries, due to the high level of gun-related crime in the country. He also stated that he was generally satisfied with the quality of police investigations. Amnesty International is deeply concerned that this comment may suggest that the PPCA is not fully committed to ensuring that internationally agreed minimum standards are adhered to in respect of the investigation of alleged human rights violations by police officers in Jamaica.*

*The office also suffers from under-resourcing; currently staffed by just four investigators for the whole country. The Chairperson of the PPCA acknowledged that in practice it is difficult for those outside the areas of Kingston and Montego Bay, where PPCA offices are located, to report complaints.*

### **Complaints against the Jamaica Defence Force**

*Despite the involvement of soldiers in civilian law enforcement roles, and the many allegations of their involvement in serious human rights violations in this context, no independent mechanism exists to oversee or supervise the investigation of complaints against soldiers.<sup>67</sup>*

Internal investigations of complaints into alleged offences by soldiers are shrouded in secrecy and the Jamaica Defence Force has reportedly failed to co-operate in criminal investigations, notably in the Gayle case (see below).

### **Autopsies**

One of the major factors prolonging impunity is the inadequacy of forensic investigation into deaths at the hands of the security forces.

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<sup>67</sup> The Chairman of the PPCA indicated that complaints regarding ill-treatment by soldiers could be reported to the Public Defender. However, the Public Defender stated to Amnesty International that he has not received or investigated any such complaints.

International standards<sup>68</sup> provide that investigations must include an adequate autopsy, as well as collection and analysis of all physical and documentary evidence and statements from witnesses. They stress that the autopsy report is as important as the autopsy itself, and must be full, detailed, clear, comprehensible and objective. Standards also provide, *inter alia*, that the body of the deceased person must not be disposed of until an adequate autopsy is conducted by a physician, who should be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

Standards also state that, in order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organisations or entities.

Standards governing autopsies into cases of deaths through gunshots are even more specific. In cases of shooting fatalities

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<sup>68</sup> See UN Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principles 12, 13, 14 and 16.

*information recorded should include, amongst other factors, an extensive account of the scene of the incident; weapons involved; types of bullets; cartridge cases; relative positions of persons involved; examination of clothing; investigation and documentation of blood splashes on body surfaces; precise description of bullet entry and exit wounds relative to anatomical landmarks and distances from soles of feet and bullet tracks within the body; excision of uncleaned skin specimens surrounding entry and exit wounds; X-ray before and during autopsy and determination of bullet tracks and their directions ; final determination of direction(s) of fire, of the succession of shots, of intra vital occurrence, of the victim's position.*<sup>69</sup>

*In Jamaica, autopsies frequently fail to conform to an even minimal degree to international standards. Their inadequacies need to be urgently addressed.*

*A forensic expert, Professor Derrick Pounder, who reviewed a series of autopsy reports undertaken by state pathologists where there had been disputed accounts of fatal shootings in each case concluded that the autopsies, “did not constitute autopsies in the normally understood sense of the word”, and failed to reach internationally accepted standards for best practice. Every autopsy report lacked the most basic, essential data. In some cases the cause of death was not even stated. One report, concerning Sylvester Wint (see page 13), indicated only that the body was discovered “lying on the ground suffering from a gunshot wound” - with no further information on injuries provided at all. In another, that of Rasheed Williams (see page 24), the pathologist failed to fully open the skull, despite the fact that the Williams was shot in the head.*

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<sup>69</sup> For example, see *The Harmonization of Medico-Autopsy Rules*, Council of Europe, Recommendation No. R (99) 3 and explanatory memorandum, adopted by the Committee of Ministers of the Council of Europe on 2 February 1999.

In a number of cases, such as that of Matthew Mullins (see pages 23), clothing has been discarded after the autopsy.<sup>70</sup> *Mullins' relatives were denied access to view the body, but were reportedly asked to sign papers indicating that he had died from gunshot wounds.*

*International standards state that the family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy.*<sup>71</sup> Administrative procedures regarding autopsies were reformed in October 1999, to allow for this to happen. The reforms followed the outcry over the killing of Michael Gayle, and in particular, the condemnation by Jamaicans for Justice, of attempts by the state pathologist to prevent an independent pathologist representing the family of the deceased to observe Gayle's autopsy.

Despite this change, reports of repeated obstruction by state pathologists continue. Since October 1999, state pathologists have continued to refuse relatives, or forensic experts whom they appoint, full access to observe autopsies in many cases of fatal police shooting. Independent forensic observers have been reportedly forced to stay in one place, preventing them from viewing the body during the examination, and have been prevented from asking questions or taking notes or photos. Some relatives have been unable to make arrangements for expert observers to witness proceedings because they have only been informed of the date of the autopsy the day before it occurred. Relatives have also been refused permission to view bodies by police officers after arriving at the morgue.

The Minister of National Security and Justice had also stated that legislation would be enacted to provide for the right to observe autopsies. At the time of writing however, such legislation had yet to be brought into effect.<sup>72</sup>

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<sup>70</sup> Amnesty International had originally requested and received copies of the reports from the authorities. However, every report received from the authorities was missing vital pages. Copies were obtained from other sources.

<sup>71</sup> See for example, UN *Principles for the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions*, principle 16.

<sup>72</sup> Under Jamaican law, *post mortem examinations into violent, unnatural or sudden deaths are discretionary.*

*Authorities, including prosecutorial agencies, do not appear to concede such failings. In an interview with Amnesty International in August 2000 for example, the DPP stated that he considered the quality of forensic and ballistics evidence to be satisfactory. He also stated that whilst many inadequately detailed post mortem reports had been received prior to the establishment of the BSI, no files had been returned for lack of forensic evidence since its inception.*

### **Coroner's Inquests**

*The UN Human Rights Committee has noted that not all cases of deaths at the hands of police or security forces in Jamaica are subject to a coroner's inquest. It recommended that all such deaths be inquired into.<sup>73</sup>*

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<sup>73</sup> As in other countries with similar legal systems, the main function of the inquest system in Jamaica is to inquire into the circumstances and determine the cause of sudden or unnatural deaths which are not the subject of criminal proceedings.

Under Jamaican law, coroners have discretion in deciding whether to hold an inquest.<sup>74</sup> In practice, as the case of Michael Gayle illustrates, these are often only held following sustained public pressure.

The Human Rights Committee also recommended that in all such cases, inquests ordered under the Coroners Act must be re-opened if no prosecution ensues. By law, inquests may be postponed until the conclusion of criminal proceedings at the discretion of the Coroner. In practice, inquests adjourned in this way are not reopened in every case, if no prosecution or conviction ensues. Coroners may exercise discretion in deciding whether to resume or hold an inquest in such circumstances.<sup>75</sup>

Where directions are given for inquests into police killings to be held, they are often subject to frequent adjournments and delays. There is a general shortage of coroners and in some cases, coroners have failed to turn up on the appointed day.

The relatives of the deceased have no right to legal

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<sup>74</sup> The Coroners Act, 12 June 1900, s. 14.

<sup>75</sup> *Op. Cit.*, 14. A Coroner exercising his discretion, by deciding not to resume an inquest in these circumstances, must be satisfied that criminal proceedings have established the cause of death and ascertained that it is not suspected to be murder or manslaughter.

*Op. Cit.*, 15. Coroners must forward medical and police records together with a statement to the DPP. Should a ruling be given by the coroner that it is not necessary for an inquest to be held, the DPP is obliged to give further direction on, upon receipt of relevant reports. A Judge of the Supreme Court may also order an inquest if satisfied that a coroner has refused or neglected to or disobeyed a DPP directive than one take place, upon application to the DPP. (s. 21-(1))

representation at the inquest, although the coroner may permit a family to be legally represented at their discretion, and there is no system of legal aid provision for families to obtain representation. In practice, families are often unaware of their right to request legal representation and are often unrepresented at inquests. Given the quasi-legal status of inquests, they are often therefore placed at a disadvantage. Legal expertise is often imperative for calling and effectively cross-examining witnesses and for the proper examination of medical and other evidence.

Amnesty International has also received recent reports that in a number of cases, such as the inquest into the death of Rasheed Williams in March 2001, witnesses have been intimidated into refraining from giving evidence at coroner's inquests. In the case of Williams, the witness was reported to have withdrawn after police reportedly visited his house several times.

### **Avoiding accountability: covering-up evidence**

In many cases of alleged police abuses, accounts are disputed or there are no independent witnesses. Cases often rest upon the word of the victim or witnesses against that of the accused officer. The standard of proof in criminal prosecutions is particularly high and it can be difficult to obtain sufficient evidence to obtain a conviction unless police or army witnesses themselves come forward. Efforts to cover-up abuses, and the "code of silence" that prevents officers testifying against each other, are major barriers to overcoming impunity.

Members of the security forces have frequently resisted giving evidence at inquiries. At the inquest in December 1999 into the death of Michael Gayle for example, the coroner's jury repeatedly heard testimony from police officers and soldiers attempting to blame each other for the killing. During the investigation into the death of Gayle, the Jamaican Defence Force (JDF) also refused to make available statements that could have

aided the police inquiries. Statements by army officers and soldiers were only made available to the Coroner's inquiry after repeated attempts to obtain them by the Coroner.

Other means by which members of the security forces have reportedly attempted to cover up brutality to avoid being held accountable for their actions include forcibly preventing individuals from viewing shootings; intimidation and death threats; charging the victim, or potential witnesses, with offences such as possession of narcotics or firearms or assault; failing to report misconduct and filing false or incomplete reports to cover up abuses (commonly by claiming that fatal shootings occurred in the context of an exchange of gun fire) and contaminating forensic evidence. In some cases people have even been charged with shooting at police.

Amnesty International has received numerous reports, which it believes to be credible, that police officers implicated in shootings have attempted to avoid being held accountable by removing or interfering with vital forensic and ballistics evidence. Such evidence is particularly crucial, given the numbers of disputed accounts that take place with the word of the police at odds with that of witnesses.

Some relatives have been forcibly prevented from accompanying police officers to the morgue and there has been concern that police have in some cases inflicted further subsequent injuries. In one case described above for example (page 16), relatives stated that a victim had been shot in the arms after he was forcibly removed from the scene of the shooting by police.

Bodies of deceased victims are invariably handled and removed immediately after shootings take place, before the arrival of forensic practitioners. Bodies are not normally stored in body bags; a standard procedure to prevent the body being contaminated with substances that could interfere with the forensic evidence. One man described seeing the body of his relative stacked on top of a pile of other naked bodies in a mortuary. In several cases, police have ransacked properties after a shooting has taken place.

Reports also indicate that ammunition shells are removed and disposed of by police officers, and that officers have in some cases failed to hand in their weapons immediately after a shooting takes place, in contravention of international standards, including the UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, which stresses the need for efficient reporting mechanisms to account for every piece of ammunition used.<sup>76</sup> Interference with ballistics evidence also

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<sup>76</sup> UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. 11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that: (d) Regulate the control, storage and issuing

contravenes domestic policy, which provides that every piece of ammunition used and every use of a firearm must be immediately accounted for to superior officers, registered and reported.<sup>77</sup>

*International standards state that prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations.*<sup>78</sup> The Director of Public Prosecutions stated to Amnesty International that witnesses, not police, were mostly responsible for picking up ammunition shells. While Amnesty International is not in a position to verify that witnesses never interfere with such evidence, the organisation is concerned that the DPP assumes such practices take place; an assumption that appears to automatically favour the police version of events.

### **Threats, intimidation and torture of witnesses, relatives and attorneys**

There have been many credible reports indicating that police and army officers have attempted to intimidate victims, relatives of victims, lawyers or witnesses, in an attempt to prevent such individuals making official complaints or testifying at inquiries.

*The UN Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions state that complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position*

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of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them.

<sup>77</sup> Appendix "A" to Force Orders 2492 Dated 20.02.97, IX. Issue of Firearms, E. and F.

<sup>78</sup> *Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990), principle 11.*

*of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.*<sup>79</sup>

Amnesty International has received credible information indicating that many relatives of victims of abuses and witnesses have received death threats, including, in some cases, both before and after shootings have taken place. In June 2000, eye witnesses reportedly received death threats from police officers following the fatal shootings of Quwame Pickering and Danville Patterson in Craig Town. One member of the security forces allegedly also drove past mourners with a cocked rifle at Pickering's funeral procession.

Amnesty International has also documented an increase in reported allegations of the short-term detention, ill-treatment and occasionally torture of relatives of alleged criminal suspects. The allegations include those made against members of the Crime Management Unit (see page 36).

Witnesses testifying against the police have not received adequate state protection. In 1997 the Ministry for National Security and Justice established a Witness Protection Programme. However, Amnesty International is concerned that doubts have arisen as to its effectiveness in ensuring the safety of witnesses, particularly those involved in testifying against officers implicated in human rights violations. Individuals seeking protection before or after trial may enter the programme upon the recommendation of either the DPP or the police. In practice however the police are normally the first point of contact. In September 2000, personal information on a individual in the program was reportedly leaked to police officers allegedly under investigation for drug offences in September 2000. Acting on the information, one officer reportedly visited the informant's house and that of his relatives and made death threats.

Authorities do not appear to concede the need for reform to the programme to ensure adequate witness protection. The DPP stated that the programme was "functioning as effectively as any witness protection programme can." Following media reports of the alleged leak, the Ministry of National Security and Justice has refused to confirm or deny the allegations.

## **Threats against lawyers and human rights defenders**

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<sup>79</sup> Principle 15.

International standards stress that states are under a duty to protect those who defend human rights. The UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on Human Rights Defenders), for example,<sup>80</sup> obliges the State to take all necessary measures to ensure the protection, by competent authorities, of everyone, individually and in association with others, against any violence, threats, retaliation, discrimination, pressure or any other arbitrary action as a consequence of the legitimate exercise of the rights referred to in the Declaration to defend and promote human rights. Everyone is entitled to effective protection under national law in opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms. Furthermore, the Defender's Declaration states that those professionally qualified, have the right to offer and provide legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

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<sup>80</sup> A/RES/53/144, 8 March 1999, Fifty-third session, Agenda item 110 (b), RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY [on the report of the Third Committee (A/53/625/Add.2)], 53/144, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*: articles 9 3(c) and 12.

Lawyers representing victims of alleged abuses and human rights activists have been targeted for threats and intimidation in Jamaica. As this report was going to press, Jamaicans for Justice reported receiving a number of death threats, following the killing of seven men in Braeton on 14 March 2001. Over three days in June 2000, Dr. Carolyn Gomes, the Director of group, received death threats by phone. Jamaicans for Justice has also reported surveillance of their work, including through wire-tapping and police infiltration of meetings. Following the killing of Sylvester Wint in 2000, high-ranking police officers allegedly criticised Jamaicans for Justice in a press conference, accusing them of politically motivated involvement in the shooting. A journalist who had queried political involvement behind the shootings also reportedly had a gun placed through his window the next day and was threatened.

Attorney Dahlia Allen left Jamaica in August 2000 after alleging intimidation and harassment, including death threats. She had represented a number of those ill-treated by the police in the Montego Bay removal in June 1999, as well as representing a number of prisoners allegedly ill-treated during the course of disturbances in St. Catherine's prison in May 2000. The Prime Minister strongly refuted allegations that Mrs Allen's telephone had been tapped and that she had been the subject of intimidation in a meeting with Amnesty International in September 2000, although media reports stated in October that a number of illegal wiretaps had been executed without the Prime Minister's consent or knowledge.

Amnesty International is further concerned about a number of comments from those in authority, which have been openly derisive of the work of human rights defenders. Both the Prime Minister and the Minister for National Security and Justice have derided the work of Amnesty International and others involved in the defence of human rights, claiming they cared little for police officers killed in the line of duty or the victims of crime. The Chairman of the Police Federation has also made allegations suggesting links between Jamaicans for Justice and armed criminals, labelling the group "suspicious" and stating that the Police Federation would monitor the group "closely". Such comments are conducive to a climate of disrespect for human rights and may further encourage harassment of human rights defenders and undermine freedom of expression.

## **Secrecy of investigations**

Public confidence in the Jamaica Constabulary Force and the Jamaica Defence Force, including the complaints and disciplinary process, is further undermined by the secrecy of police and army internal investigations and civilian oversight.

International standards stress that families and legal relatives are to be informed and

have access to hearings and all other information relating to investigations.<sup>81</sup>

The lack of transparency in police investigations has been criticised by the UN Human Rights Committee. In 1997, the Committee lamented the lack of published information about the alarmingly high incidence of the use of firearms by the police and security forces, and urged that the outcome of all investigations to be made public.<sup>82</sup>

Some efforts have been made to address the provision of public data in relation to the use of force by the police. In October 1999 the Constabulary Communications Network was established, replacing the Police Information Centre as the public information service for the JCF. This body provides certain data on demand, such as official records of the numbers of fatal police shootings and the numbers of police officers killed.

Complainants and their lawyers have however continued to report extensive difficulties in obtaining information about the status and outcome of police investigations. They are not customarily kept informed of the status or outcome of police internal investigations or investigations by the civilian PPCA. The authorities have frequently failed to respond to Amnesty International's requests for information about the outcome of investigations into many killings by law enforcement officials in disputed circumstances.

In some cases, police have even refused to confirm whether a casualty was alive or dead. In one case, a mother had to be informed of the death of her son in a fatal police shooting by hospital staff, after police refused to confirm or deny reports.

*The legislative framework governing investigations, acts as a further disincentive to prevent the development of a culture of transparency in investigations. Under the Police Public Complaints Authority Act for example, the PPCA may withhold interim reports if an investigating officer considers it might, "adversely affect the investigation of the complaint." In practice, complainants are virtually never informed of the status of complaints.*

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<sup>81</sup> See for example, UN *Principles for the Effective Prevention and Investigation of Extralegal, Summary and Arbitrary Executions*, No. 17.

<sup>82</sup> As previously cited, concluding observations (16).

Legislation has even been passed with provisions criminalizing those who make information relating to the findings of the Government Police Force Inspectorate available to the public. Publishing such information is punishable by a fine or imprisonment, with the possibility of hard labour for a term of up to 12 months. Under the Constabulary Force (Amendment) Act 1997, a Government Police Force Inspectorate was established to monitor and report on police officers compliance with internationally accepted standards of policing, and to monitor the implementation of JCF Force Orders and policy.<sup>83</sup> Prohibited information includes the mandatory, annual reports of findings and recommendations that the Inspectorate must produce for the Minister, to be subsequently laid before Parliament.

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<sup>83</sup> The Constabulary Force (Amendment) Act, 1997, section 81.-(1) (b) and (a). The Inspectorate is composed of public officers and is granted broad powers to inspect police records and premises.

Other investigative and prosecutorial bodies are also failing to provide adequate information. Although the civilian PPCA has acknowledged a need to make the organisation more accessible to the public, and to increase public awareness of its activities, little has been done to increase the transparency with which it operates. *The PPCA does not publish regular, detailed information regarding its activities or the quality of police investigations. Annual reports are not published or disseminated widely on a regular basis, and the body is under no obligation to make such reports public.* It has only published one annual report since its inception.<sup>84</sup> *In August 2000, the PPCA was unable to provide Amnesty International with current statistics detailing the time normally taken to dispose of complaints.*

*The PPCA's 1998-99 Annual Report reviewed just one police investigation into a fatal shooting. No information was provided in the review detailing: the grounds for which a complaint had originally been made, including whether the shooting took place in disputed circumstances; methodology and scope of PPCA review and the circumstances of the shooting. The police version of events however, alleging that the deceased had opened fire, was accepted without qualification. Such limited information provides no opportunity for meaningful analysis of either alleged patterns and practices of excessive force by police; quality of police investigations or the effectiveness of oversight into police investigations.*

In an interview with Amnesty International, the DPP was unable to provide information on prosecutions of police officers. He suggested that the BSI should provide more information on the outcome of rulings by the Director of Public Prosecutions to the public. The Public Defender for example stated to Amnesty that geographical remoteness was a factor precluding updating complainants on the status of investigations, stating that relatives can call to get updates.

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<sup>84</sup> Office of the Police Public Complaints Authority, Annual Report 1998-99, Introduction, pp. 2.

## Failure to discipline and prosecute

Successful prosecutions of police officers and soldiers invoked in human rights violations are reported extremely rarely, despite the range of laws punishing offences from assault to murder,<sup>85</sup> and despite the fact that, every year, hundreds of successful civil actions result in costly payouts to families.<sup>86</sup> Disciplining is also rare, despite the fact that both the Jamaica Constabulary Force and the Jamaica Defence Force<sup>87</sup> provide disciplinary sanctions for officers who commit abuses or who fail to

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<sup>85</sup> A rare example was the conviction on October 13 1999 of 3 police officers of non capital murder, for the murder of David Black in Rio Bueno Police Station, Trelawny, on 10 September 1995.

*Neither the BSI nor the DPP were able to provide statistics on prosecutions or disciplining to Amnesty International. Accurate information on prosecutions and disciplining of officers is not published regularly. It is common for the public to be left uninformed as to the outcome of investigations.*

<sup>86</sup> Writs are filed at a rate of approximately 10 to 12 per week, despite the fact that legal aid was not available for constitutional actions and other civil proceedings until 2000, and despite the fact that proceedings are often lengthy, with victims waiting years to receive compensation.

For example, in January 2000, two men were awarded a total of J\$6,161,510 (approximately US\$136,700) by the Supreme Court for damages arising out of a claim for unlawful assault and negligence dating back to 1991. Johnny Nugent v. Attorney General of Jamaica; Rudolph Bailey v. Inspector Vandel Preddie, Acting Corporal Errol Simms, Attorney General for Jamaica. The complainants had between 40% and 55% impairment of their bodies. The judge accepted the plaintiffs' case that a police inspector had deliberately ran into them with his jeep while they were riding on Nugent's motorcycle, causing a crash, had stolen money from them, and had left them on a pavement near a hospital.

In 1997 the UN Human Rights Committee urged that draft legislation to provide legal aid in such cases be enacted speedily and sufficiently resourced to function effectively. They recommended that Jamaica continually monitor the quality of legal aid representation, ensuring especially that competent counsel be assigned to individuals accused of capital and other serious offences, 8., CCPR/C/61/CMT/JAM/3, Sixty-first session, Geneva, 20 October - 7 November 1997.

<sup>87</sup> Responsibility for administering discipline in the JDF is vested in the Chief of Staff and the Jamaican Defence Board. Soldiers may not be discharged or transferred when charged with offences under the provisions of the JDF Act.

*report misconduct.*

Prosecutions of police and army officers alleged to have committed abuses are clearly hampered by the inadequacies of investigations. They may also be hampered by the severe trial delays that frequently take place. A recent Police Executive Research Forum study suggested that this risked resulting in “the destruction of spoilage of evidence, the forgetfulness, intimidation or even the death of witnesses.”<sup>88</sup> *In several cases police officers charged in connection with killings have absconded.*<sup>89</sup>

*In 1991, the Hirst report concluded that there was a lack of clear responsibility for abuses within the JCF, with no effective chain of command in which senior officers had management control over subordinates.*<sup>90</sup> *The report concluded that accountability had collapsed at all levels and that there was no systematic disciplining of officers.*

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<sup>88</sup> As previously cited, pp. v.

<sup>89</sup> See for example *Constables on the run*, Jamaica Gleaner, 18 September 2000.

<sup>90</sup> See *The Edge of the Knife*, previously cited, page 219.

*More recent reports have indicated that the majority of complaints about human rights abuses within the JCF still concern lower-ranking police officers<sup>91</sup> and the JCF has itself acknowledged publicly a need for improving systems for monitoring lower ranking-officers, to ensure accountability for abuses. Citing current efforts by the JCF to encourage “management by walk-about”, for example, the Head of the Police Training College acknowledged in a radio interview the very high numbers of lower-ranking police officers who were working unsupervised.<sup>92</sup>*

The failure to enforce disciplinary procedures has occurred despite overt violations of army and police policy - as the case of Michael Gayle illustrates (see page 61). Despite the prohibition of making false statements and delaying investigations, no-one has yet reportedly been disciplined as a result of the killing.<sup>93</sup>

## **Training**

*Police training has reportedly been improved in order to bring it into line with international human rights standards. New recruits now reportedly receive more training on conflict resolution skills and alternatives to deadly force, than on weapons training.*

*Although police policies reportedly incorporate the provisions of*

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<sup>91</sup> The 1998-99 PPCA Annual Report stated that there were 175 reported complaints against the rank of corporals or below, as against 51 reported complaints against Inspectors and Sergeants.

<sup>92</sup> Senior Superintendent Grant, interviewed on 'Nationwide', Hot FM, 8 August 2000.

<sup>93</sup> *Provisions in the Jamaica Defence Act for example provide that the following are offences, many of which are triable by military court martial and punishable with imprisonment: making false statements when acting as a witness before a court; making false documents or altering documents, or commanding or aiding someone else to do so; scandalous or disgraceful conduct; conduct to the prejudice of good order and military discipline; disobeying lawful commands and defying authority; and wilful damage of public property. It is also an offence to unnecessarily delay investigation of alleged infringements of JDA provisions, which are to be investigated without undue delay.*

*the UN Basic Principles on the Use of Force and Firearms, there remains a need however for such training to be more explicitly enforced. Training should also incorporate provisions of other relevant human rights instruments, including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and the UN Declaration on the Protection of All Persons from Forced Disappearance.*

*Furthermore, this training does not reportedly apply to members of the army deployed in civilian law enforcement roles. International standards state that training on and observance of codes of conduct for law enforcement officials should apply to all those who exercise police powers, especially the powers of arrest or detention. The UN Code of Conduct for Law Enforcement Officials specifies that in countries where police powers are exercised by military authorities, the definition of law enforcement officials should be regarded as including officers of such services.*

*The reform of the police training program appears to have reassured those foreign government donating aid to the JCF. In January 2001, the authorities of the United Kingdom (UK) agreed to allow the supply of 500 guns to the JCF, having previously withheld an export licence for transfer of the pistols in August 2000, citing concerns around human rights abuses. (The government of the United States of America (USA) also halted the transshipment of bullet proof vests around the same time.) The UK authorities stated that they were satisfied that the human rights training would be sufficient to ensure that the firearms would not be used to commit human rights violations. A £19.5 million training programme for law enforcement officers in 14 countries in the English-speaking Caribbean was subsequently announced.*



## **CONCLUSION: LIVING WITH POLICE VIOLENCE TOO LONG**

The loss of life at the hands of the Jamaican Constabulary Force borders on a human rights emergency. Changing the climate of impunity which encourages continuing police violence is an immediate priority.

As this report was going to press, seven young men, including one fifteen year old, had just been shot dead after approximately 60 police officers from the Crime Management Unit in Braeton, Kingston, went to their house.

A police news release stated that, at 5 a.m. on 14 March 2001, they were met with a hail of gunfire after identifying themselves and requesting entry to a house. They claimed seven men were shot and injured as police returned fire and that several others escaped from the property where the police sought to serve an arrest warrant in connection with the murder of an officer. The press release, which described all the men as “gunmen”, made no mention of the motive for the police operation, although police subsequently alleged that it was in connection to the murder of a police officer the previous week.

Residents told a different story. Their testimonies stated that the police had beaten five of the men - whose ages ranged from 15 to 20 - after dragging them into the front yard of the house, before executing them one by one inside the property. The residents told of hearing the young men plead as they begged police for their lives. One neighbour responding to the pleas was shot and killed. Another of those killed was a man passing by the house on an errand, toothbrush still in hand. Residents meanwhile reported that they were kept away from the house at gunpoint for six hours, as police attempted to cover-up evidence of the alleged executions.

Despite the passionate response and debate the incident prompted in Jamaican society, the reaction of the government was a deafening silence. A week after the killings, the Minister of National Security and Justice, K D Knight, made a short statement that he had faith in the investigation process and would not be “coerced” into “interfering” with the investigation. As one newspaper commentator put it “unfortunately, though, as the controversy grew over the Braeton affair Mr Knight kept quiet for a week, and when he

spoke Wednesday night, it was not with a calming assurance but in hectoring fashion about the legal processes and to lecture families about the need to keep their children in check and ‘out of the clutches of crime’<sup>94</sup>.

Government officials have told Amnesty International that the system of investigation into possible police misconduct is autonomous and that it would therefore be wrong to “interfere” with the process. This line of reasoning ignores the fact that the government is responsible for ensuring that law enforcement officials are held accountable and that justice is served.

It is no longer acceptable for the government of Jamaica to use these excuses to stand on the sidelines watching the unacceptably high level of killings by the police continue. The Jamaican government must demonstrate the will and invest the resources to improve the timeliness and quality of investigations into abuses by law enforcement officials. It should make clear its total opposition to extrajudicial executions, torture and other human rights violations by the police and security forces, and its determination to ensure that any officers who commit violations are brought to justice.

Amnesty International believes that the problems of lack of public trust in the police and the JCF’s inability to prevent violent crime are closely related. The authorities’ repeated calls for the public to aid the police will not be heeded if the police continue to beat and kill with impunity. For the sake of the people of Jamaica, Amnesty International calls on the government to formulate a *National Plan of Action on human rights* and to implement the following recommendations as soon as possible.

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<sup>94</sup> Source: “With friends like these, Mr Paterson”, Jamaican Observer, 23 March 2001.

## RECOMMENDATIONS

*Human Rights are a legitimate subject for international law and international scrutiny.*

*Law enforcement officers are obliged to know, and to apply, international standards for human rights.*

*Amnesty International is calling for the formulation of a **National Plan of Action** on human rights in keeping with the commitment made by all of the world's states in June 1993 during the UN World Conference on Human Rights in Vienna.*

*Amnesty International calls on the government of Jamaica to work with civil society in developing such a plan, to articulate a national consensus on human rights built around the challenges of prevention and accountability.*

*Amnesty International calls upon the Jamaican authorities to implement the following Programme as a positive indication of their commitment to stop human rights abuses. It invites concerned individuals and organisations to join in promoting the program.*

- Official condemnation
- Restraints on lethal force
- The right and duty to disobey
- Chain-of-command control
- Investigations, prosecution and discipline
- Protection against death threats
- Protection of human right defenders
- Safeguards during arrest, detention and interrogation
- No use of statements extracted under torture

- Non-discrimination in law enforcement
- Provide and enforce effective training
- Reparations
- Ratification of human rights treaties and implementation of international standards

### **Official Condemnation**

- Pending the formulation and implementation of a national plan of action, Jamaica's highest authorities should demonstrate their absolute opposition to extrajudicial executions, torture and ill-treatment. They should be condemned whenever they occur.
- The government should make clear to all law enforcement officials, including members of both the police and the military, that these will not be tolerated under any circumstances.
- Authorities at all levels of government should explicitly commit themselves to promoting respect for human rights.*

### **Restraints on legal force**

- Law enforcement officials should not use lethal force except when strictly unavoidable in order to protect life and to the minimum extent under the circumstances.*
- The Jamaica Constabulary Force and the Jamaica Defence Force should ensure that their policies on the use of force and firearms conform to international standards, including the UN *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, the UN *Basic Principles on the Use of Force and Firearms* and the UN *Declaration on the Protection of All Persons from Forced Disappearance*, and that these standards are strictly enforced.
- If firearms are used, law enforcement officials should identify themselves and give clear warnings of their intent to use firearms.
- Medical assistance and aid should be rendered at the earliest possible moment
- Relatives or friends of the affected person should be notified at the earliest possible moment.

### **The right and duty to disobey**

- ❑ *Law enforcement officials should be instructed that they have the right and duty to refuse to obey any order to participate in an extrajudicial execution or act of torture.*
- ❑ *Law enforcement officials who have reason to believe that a violation has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.*
- ❑ *An order from a superior officer must never be invoked as a justification for taking part in an extrajudicial execution or act of torture.*

### **Chain-of-Command Control**

- ❑ *Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit extrajudicial executions or torture.*
- ❑ *The JCF and the JDF should issue clear guidelines requiring officers to report abuses. Superior officials with chain-of-command control should be held responsible for enforcing these guidelines and for strictly enforcing penalties for failing to report, or covering up, abuses.*
- ❑ *Officers who order or tolerate extrajudicial executions, torture or other human rights abuses by those under their command should be held criminally responsible for these acts, including if the superior officer knew or should have known of abuses but failed to take concrete action.*
- ❑ *The JCF and the JDF should ensure that those officers who testify against their fellow officers in criminal or civil proceedings, or in disciplinary hearings, should be supported and protected from intimidation and threats. Law enforcement officials shall not suffer administrative or other penalties because they have reported violations have occurred or are about to occur.*
- ❑ *The JCF and the JDF should establish early warning systems to identify and deal with officers involved in human rights violations. They should establish clear reporting systems and keep detailed records of every officer's conduct. The records should be regularly audited in order to identify, and take remedial action in respect of, any patterns of abuses. The records should be open to inspection by independent oversight bodies.*

### **Investigations**

#### **Investigations to be held in every case of alleged violations**

- ❑ *The Jamaican authorities should ensure that all allegations of human rights violations by*

members of the security forces -- including both the Jamaica Constabulary Force (JCF) and the Jamaica Defence Force (JDF) are investigated fully, promptly and impartially by a body which is independent of those allegedly responsible and which has the necessary powers and resources to carry out the investigation. Particular scrutiny should be given to the role and activities of the Crime Management Unit.

- ❑ The PPCA should prioritize investigations into police killings and torture. In particular, it should ensure that in all such cases it:
  - Compels officials allegedly involved in executions and torture to appear and testify and insists on cooperation from police departments and individual officers;
  - Demands the production of evidence;
  - Requires the JCF to provide information on action taken in individual cases, with reasons for inaction;
  - Provides regular, detailed public reports, at least annually, giving relevant data, including the type and outcome of complaints;
  - Publicizes the complaints procedure within the community to ensure that it is accessible to the public; information about complaints procedures should be prominently displayed in all police stations.
- ❑ The authorities should establish an independent and effective oversight body with the authority to investigate and review complaints of human rights violations by the public against members of the Jamaica Defence Force.
- ❑ Inquests should be held in the case of every death suspected to be at the hands of the security forces.

#### **Purpose of investigations**

- ❑ Investigations should serve to identify victims; recover evidence; discover witnesses; discover cause, manner, location and time of crime and identify and apprehend perpetrators. Investigations shall also include the determination of any pattern and practice which brought about death.

#### **Manner of investigations**

- ❑ Complainants, witnesses, lawyers, judges and others involved in the investigation should be protected from intimidation and reprisals. No pressure, whether physical or mental, shall be exerted on witnesses, victims or suspects in attempting to obtain information.
- ❑ Officials suspected of responsibility for extrajudicial executions, torture and other violations should be suspended from active duty during the investigation.
- ❑ The investigation must *include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses*. Crime scenes should be carefully processed and evidence carefully collected and preserved, including forensics and ballistics evidence. Incident scenes should be secured until the arrival of forensic experts. The body of the alleged victim should not be disposed of until an adequate autopsy has been conducted by a suitably qualified doctor who is able to function impartially. Those undertaking autopsies should be experts in forensic pathology. Doctors appointed by relatives to be present at an autopsy on their behalf should be granted full access to observe the autopsy without obstruction. Relatives should also have access to view the body of the deceased.
- ❑ Autopsy reports should conform to international standards and be full, detailed, clear,

comprehensible and objective. They should:

- attempt to establish the identity of the deceased and the cause and manner of death.
- determine to the extent possible the time and place of death
- include detailed colour photographs of the deceased
- describe any and all injuries to the deceased including any

evidence of torture

- include examination of clothing

Autopsy reports into shooting fatalities should include:

- extensive account of the scene of the incident, weapons involved, types of bullets, cartridge cases, relative positions of persons involved;
- investigation and documentation of blood splashes on body surfaces;
- precise description of bullet entry and exit wounds relative to anatomical landmarks and distances from soles of feet and bullet tracks within the body;
- excision of uncleaned skin specimens surrounding entry and exit wounds;
- X-ray before and during autopsy
- determination of bullet tracks and their directions
- final determination of direction(s) of fire, of the succession of shots, of intra vital occurrence, of the victim's position.

- Information on civil lawsuits alleging police or army misconduct should be forwarded to the DPP and the PPCA. Information on the number of lawsuits filed, judgements and settlements should regularly be made public.

#### **Public confidence and transparency**

- There should be greater transparency in the investigation of complaints of human rights violations.
- The methods and outcome of all criminal, disciplinary and administrative investigations into alleged violations, including all disputed shootings and deaths in police custody, should be made public promptly after the completion of the investigation. Detailed national data on police and army use of force should also be compiled and regularly published with analysis of patterns of concern and recommendations.
- Complainants should be kept informed of the progress of investigations.

#### **Prosecutions and discipline**

- The Jamaican government should ensure that those responsible for extrajudicial executions, torture and other human rights abuses - including failure to report misconduct - are brought to justice.*
- This principle should apply no matter how much time has elapsed since the commission of the crime, and wherever such people may be.
- Trials must be fair and take place in civilian courts.

- ❑ The perpetrators should not be allowed to benefit from any legal measures exempting them from criminal prosecution or conviction.
- ❑ *The Jamaica Constabulary Force, the Jamaica Defence Force and the Police Public Complaints Authority should publish regular statistical data on the on the internal disciplinary process and the outcome of disciplinary action.*

### **Role of prosecutors**

- ❑ Prosecutors should give due attention to the prosecution of crimes committed by public officials, particularly abuse of power, grave violations of human rights, and, the investigation of such offences, including supervision over legality of these investigations, supervision of the execution of court decisions.
- ❑ Statements and other evidence obtained through torture should not be invoked in any proceedings, except against a person accused of torture.

### **Protection against death threats**

- ❑ *The Jamaican government should ensure the full implementation of a comprehensive witness protection programme for the effective protection from death threats and other forms of intimidation of all those involved in investigations or other proceedings against those alleged to have committed human rights violations , including victims, their relatives, witnesses, police officers or soldiers, lawyers and human rights defenders.*

### **Human Rights Defenders**

- ❑ *Authorities at all levels of government should explicitly commit themselves to the protection of human rights defenders.*
- ❑ *State officials at all levels should fully collaborate with and facilitate the work of members of non-governmental organisations.*
- ❑ *Effective action should be taken to ensure that all state agents, including law enforcement officers and the security forces, recognise the legitimacy*

of the work of human rights defenders and abstain from making unsubstantiated allegations about human rights defenders. Statements of this nature must be rectified publicly and promptly and those responsible should face disciplinary action.

- ❑ Integrated programmes for the protection of human rights defenders should be adopted that include preventative measures such as thorough criminal investigations into attacks and threats against human rights defenders, education for security force agents on the rights of human rights defenders to carry out legitimate activities as well as security measures to assist human rights defenders and their families with immediate safety issues.

## **Provision of safeguards during arrest, detention and interrogation**

### **Arrest**

- ❑ No-one should be subject to arbitrary arrest and detention.
- ❑ Anyone who is arrested should be informed at the time of the arrest for the reasons of the arrest and of any charges against him. Officers carrying out the arrest should identify themselves to the person arrested and, on demand, to others witnessing the event. Police officers and other officials who make arrests should wear name tags or numbers so that they can be clearly identified. Police and military vehicles should be clearly identified as such.
- ❑ A record of each arrest must be taken and include: time of arrest; reasons for arrest; identity of officers involved.
- ❑ All detainees should be brought before a judicial authority without delay after being taken into custody.
- ❑ All those arrested should have access to a lawyer and adequate opportunity to communicate with him or her in private.

### **Detention**

- ❑ No person under any form of detention should be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, including all forms of sexual abuse. Law enforcement officials should be instructed that rape in custody constitutes an act of torture that will not be tolerated.
- ❑ Torture often takes place while detainees are held incommunicado - unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. *Accurate information on the arrest*

*and detention of any detainee must be made immediately available to families, lawyers and the courts. Families and others should have prompt and regular access to them thereafter to verify the detainee's continued well-being. If detainees to not have the financial or technical means to send word to their relatives, officers must be prepared to do it for them.* Officers must ensure that relatives are not obstructed from obtaining this information.

- ❑ All detainees should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention.
- ❑ Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Judges should investigate any evidence of torture and order release if the detention is unlawful.
- ❑ Every detainee must be informed promptly after arrest of his or her right to a legal counsel and be helped by the authorities to exercise this right. A lawyer should be present during interrogations. While being interrogated, no detainee may be subjected to violent methods or threats which impair his or her capacity of decision or judgement. Detainees must be able to communicate regularly and confidentially with their lawyer, including having meetings with their lawyer within sight but not hearing of a police officer, in order to help prepare the detainee's defence and exercise his rights.
- ❑ An independent doctor should promptly conduct a medical examination of the detainee after he or she is taken into custody in order to ascertain that the detainee is healthy and is not suffering from torture or ill-treatment. Thereafter medical care and treatment shall be provided whenever necessary.
- ❑ Registers of detainees should be kept. Information to be entered into them should include:
  - The name and identity of each person detained
  - Reasons for his or her arrest or detention
  - Names and identities of officials who arrested the detainee and transported him
  - Date and time of arrest and of transportation to a place of detention
  - Time, place and duration of each interrogation and name of interrogators
  - Time of detainee's first appearance before a judicial authority
  - Precise information on place of custody
  - Date, time and circumstances of release of transfer to another place of detention.
- ❑ The authorities responsible for detention should be separate from those in charge of interrogation.
- ❑ The Jamaican government should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. Lock-ups facilities should be

humane, designed to preserve health. Detainees should be provided with adequate water, food, shelter, clothing, medical services, exercise, and items of personal hygiene. This is a fundamental and universally applicable rule to be applied without distinction and should not be dependent on material resources.

- ❑ *The rights and special status of children and women are to be protected. Children in police custody should be provided with adequate safeguards in accordance with international standards. Juveniles are to be separated from adults and alternatives to custodial care should be provided. Women detainees should be supervised and searched only by female members of staff.*
- ❑ There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

### **Non-discrimination in law enforcement**

- ❑ The JCF and the JDF should not unlawfully discriminate in protecting the community on the basis of any status, including race, gender, religion, language, colour, political opinion, sexual orientation, birth or property.

### **Provide effective training**

- ❑ It should be made clear during the training of all officials that deliberate and unlawful killings and torture are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any such order.
- ❑ Training for law enforcement officials should include: international standards on human rights, incorporating the UN *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* and the UN *Basic Principles on the Use of Force and Firearms*; how to deal with situations which have often led to excessive force, including arrests, pursuits and coping with disturbed individuals; gender issues and sensitivity to other vulnerable groups. Such training should be strictly enforced.
- ❑ Proper screening procedures must exist to select law enforcement officials.

### **Reparations**

- ❑ All victims of crime, abuse of power and human rights violations should be treated with compassion and respect.
- ❑ Victims of extrajudicial executions, torture and ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate

financial compensation and appropriate medical care and rehabilitation. Redress procedures should be expeditious, fair, inexpensive and accessible. Unnecessary delay in the handling of victims' cases should be avoided.

### **Ratification of human rights treaties and implementation of international standards**

- ❑ The government should ensure full implementation of the UN *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* and the UN *Basic Principles on the Use of Force by Law Enforcement Officials*.
- ❑ The government should ratify without reservations international treaties containing safeguards against torture, including the UN *Convention against Torture* with declarations providing for individual and inter-state complaints.
- ❑ Governments should ensure full implementation of international instruments, and comply with the recommendations of intergovernmental organisations and resolutions concerning these abuses. The government should ensure full support for human rights protection mechanisms and initiatives within the UN and Inter-American human rights systems, including special rapporteurs.

## **APPENDIX**

### *Summaries of other cases*

*The following are brief summaries of a selection of police killings recently reported in the media. Although the reports lack detail, and Amnesty International is unable to comment on the accuracy of the information, these examples illustrate how police killings in disputed circumstances have become almost daily events in Jamaica.*

#### **2001**

26 January 2001, Lukart Lowe, age 50, Bamboo, St. Ann

Police described the killing of Lukart Lowe, a farmer, as a shoot-out. However, residents claimed that Lowe was extrajudicially executed, claiming that Lowe was shot in the head and again when he fell to the ground. According to protesters, four policemen arrived at Lowe's house, following a dispute Lowe had with another farmer, who made a report to the police. Lowe was called out of his house and came out with his hand on his head begging the police not to kill him. Media reports indicated that the BSI was investigating. Following the killing, hundreds of residents of Bamboo and adjoining districts in St. Ann blocked the roads in protest.

## **2000**

3 April 2000, Shaheed Graham, aged 16, Church Street, Kingston  
Witnesses alleged that Shaheed Graham was shot in the back by police after refusing to stop. Police claimed they challenged Graham after spotting a bulge in his waistband they believed to be a gun and that he had pulled a pistol from his waist after being told to raise his hands. Graham died after waiting for medical attention for two hours. The shooting led to demonstrations.

Dennis Myers, aged 46, 5 August 2000, Savanna-la-mar

Dennis Myers, a mentally ill man, was shot in the foot by police in Savanna-La-Mar, Westmoreland. Media accounts suggested that he had been shot accidentally by a police officer who was aiming at a man smoking marijuana. The officer concerned was reportedly removed from duty, but the current status of the case is unknown.

Ricardo Stewart, aged 19, 25 August 2000, Green Island, Hanover.

Stewart was fatally shot by police who allegedly arrived to arrest him following a family dispute. According to information received by AI, the shooting was still being investigated by the BSI at the time of writing.

Residents of Nannyville Gardens, off Mountain View Avenue, Kingston, alleged that Sean Sangster, aged 19, was shot in the back of the head on 22 May by a police officer, in what appeared to be a retaliatory-style killing, after the officer realised that he had shot his colleague accidentally. Police officers had allegedly been firing without restraint. At least four witnesses alleged that the police had lied in their account of the incident, which stated that Sangster was shot after opening fire with a handgun. Police alleged that a gun and ammunition were taken from him.

Following the incident, the Minister for National Security and Justice urged that the police maintain a “strategic, systematic and professional resistance” to any attempt to undermine their roles as law officers and sent a message of support to the police.

Amnesty International was informed that Sangster’s file was sent to the authorities on 14 November 2000 and that the BSI investigation was carried out under the supervision of the PPCA. An incomplete copy of the post-mortem report was received and indicated that shots in the shoulder and chest and back.

1999

8 January 1999. Marvin Aird, Kingston

Marvin Aird was shot dead by police in his yard in circumstances which, according to eye witness accounts, may have amounted to an extrajudicial execution. Whilst the Police Information Centre maintained that he was shot after firing at officers, residents claimed the police entered his yard, spoke to him and that he was shot after he protested that he had done nothing wrong. Residents alleged that he was mistaken for another man with similar plaited hair. Local residents protested the killing with roadblocks.

10 February 1999, Norvil Gordon, Lower St, St Andrew.

Police alleged that Norvil Gordon was killed after he opened fire on them. Norvil Gordon's sister Alicia alleged that she had pleaded with the police party not to kill her younger brother but that she had been pushed aside. His father, Byron Gordon, alleged that he was standing on a corner when an unmarked police car drew up, a policeman got out and shot his son in both legs. Norvil Gordon attempted to escape and was then chased and killed. The Office of Professional Responsibility was reported to be investigating.

21 April 1999. Errol Campbell, a 44 year old soldier with the Jamaica Defence Force was shot dead in Seaview Gardens, St. Andrew, on 21 April 1999. The PIC report allegedly stated that Campbell was shot after being caught in crossfire between police and gunmen, who had opened fire on Seaview police station. Eye witness accounts stated that Campbell had been shot three times in the stomach after identifying himself to police. They claim he had been trying to protect a little boy exposed to the danger of shots being

fired by putting him against a wall, and that he had shouted out three times that he was a soldier.

May 1999, Lloyd Campbell, aged 17, Olympic Gardens, Kingston.  
Lloyd Campbell was killed in disputed circumstances. The PIC reported that police returned fire after being shot at by a group of men and that Lloyd Campbell was found after the shooting suffering from gunshot wounds. Residents maintained that he had been washing his face at a pipe when he was approached and shot by police and that police then attempted to plant a gun on him. The incident was being investigated by the OPR.

5 June 1999, Leroy Bailey.

Initial PIC reports asserted that the 40 year old taxi driver and ex police officer was the victim of crossfire between police officers and gunmen: AHe ended up between the police and the gunman...it was an accident@ claimed a police spokesman. However, police later altered their version of events stating the officers involved believed Bailey and his passengers were wanted gunmen. The police drove up behind his taxi and opened fire indiscriminately, aiming at head level. Bailey was hit twice in the head and died instantly. A high-ranking police official - speaking upon the condition of anonymity - later told an Associated Press journalist "What happens sometimes, like in the case of taxi driver Bailey, is somewhat like the accidental bombing of civilian targets by NATO in Kosovo. But most of the time we kill criminals, not innocent people." Following protests against the shooting, riot police fired shots and released tear gas in the air, arresting 26 people. The OPR was investigating.

19 June 1999, Colin Hamilton, Grants Pen, Kingston.

*Colin Hamilton was shot in circumstances which appear to have amounted to an extrajudicial execution. According to residents, he was seen walking down a lane accompanied by two officers. A shot was heard soon afterwards and the policemen were then seen walking back to the car. According to police accounts, Hamilton was shot by a lone gunman who then ran away. It was rumoured that the police were angry that Colin Hamilton had recently escaped a prison sentence for shooting at a policeman.*