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APPENDICES: (Only available in hardcopy)

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Appendix 2: Instructions issued by the Jamaican Government Imposing Time Limits for Filing Communications to the Human Rights Committee and the Inter- American Commission on Human Rights

Amnesty International is an independent world wide human rights movement that works to promote the observance of the rights enshrined in the Universal Declaration on Human Rights and other international human rights norms. The main focus of its campaigning is to oppose:

the imprisonment, detention or other physical restriction of people by reason of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, provided that they have not used or advocated violence;

the detention of any political prisoner without a fair trial within a reasonable time or any trial procedures relating to such prisoners that do not conform to internationally recognized norms;

the death penalty and the torture or other cruel, inhuman or degrading treatment or punishment of prisoners or other detained or restricted persons, whether or not the persons have used or advocated violence;

the extrajudicial execution of persons whether or not imprisoned, detained or restricted and "disappearances", whether or not the persons have used or advocated violence.

Amnesty International also opposes deliberate and arbitrary killings and other abuses by armed political groups.

JAMAICA

A Summary of Concerns: A Briefing for the Human Rights Committee

I. Introduction

Amnesty International submits the following summary of its concerns about human rights issues in Jamaica for the consideration the Human Rights Committee in view of its examination, on 23 October 1997, of Jamaica's periodic report on the measures taken to implement the provisions of the International Covenant on Civil and Political Rights (ICCPR).

This report summarizes Amnesty International's concern that Jamaica has failed to fully implement Articles 2, 6, 7, 9, 10 and 14,17, 26 and 40 of the International Covenant on Civil and Political Rights. Among other things it describes:

the retention of the death penalty as a lawful punishment in Jamaica;

the imposition of the sentence of death following proceedings which fall short of international standards for fair trial, including the failure to provide legal aid to people sentenced to death for appeals to Jamaica's highest court of appeal and for constitutional motions;

the imposition of unreasonable time limits for the filing and review of death row prisoners' complaints to the Human Rights Committee and Inter-American Commission on Human Rights;

killings by law enforcement officials in disputed circumstances and deaths in custody;

the infliction of corporal punishment;

alleged ill-treatment by police and prison warders;

appalling conditions in places of detention and prisons, and

laws punishing consensual sexual acts in private between adult men.

This report also expresses concern about Jamaica's failure to implement the recommendations of the Human Rights Committee in individual cases considered under the Optional Protocol to the ICCPR, thus depriving people of a remedy for violations of their rights under the Covenant.

The Jamaican Government has failed to file periodic reports every five years, as required by Article 40 of the ICCPR.

Amnesty International hopes that the filing of the periodic report currently under examination indicates that the Jamaican Government is prepared to take measures to ensure fuller implementation of the provisions of the ICCPR in line with the observations of the Human Rights Committee, to provide information to the Human Rights Committee and to implement recommendations of the Human Rights Committee in the context of individual cases.

II. ICCPR Article 2: Ensuring the Guarantee of Rights and Remedies

a. Failure to ensure that all individuals can enjoy rights without discrimination

Article 2 (1) of the ICCPR provides that each State Party undertakes to ensure to all individuals within its territory the rights recognized in the ICCPR without distinction of any kind. Amnesty International considers that the Jamaican Government has failed to fully implement this undertaking. An example of this failure is the retention of criminal laws that discriminate against homosexual men, as discussed in Part V, below.

b. Failure to ensure effective remedies for violations of rights

Amnesty International is concerned that Jamaica has not met its obligation under **Article 2(3)** of the ICCPR to ensure the provision of an effective remedy for people whose rights recognized in the ICCPR have been violated.

Amnesty International notes that the Jamaican Constitution provides for a range of rights, although it is narrower in scope than the ICCPR (this was noted by the Human Rights Committee when it examined the 1981 report of Jamaica, A/36/40 paragraph 257). Under section 25 of the Constitution, people are entitled to seek protection of the rights it safeguards, but access to this remedy is effectively denied to people who cannot afford to pay for legal representation, because legal aid is not available for constitutional actions. (See Part III (a)(ii), below).

As a result of the ratification of the Optional Protocol, people claiming violations of their rights under the Covenant may file communications with the Human Rights Committee. However, the government has consistently declined to implement recommendations of the Human Rights Committee when it has found that the rights of an individual under the ICCPR have been violated.

Since Jamaica ratified the ICCPR and became a party to the First Optional Protocol, the Human Rights Committee has examined about 50 admissible communications from people complaining of violations of their rights under the ICCPR. The majority of communications were submitted by or on behalf of prisoners under sentence of death.

The Human Rights Committee has noted in several cases over the years that the Jamaican Government failed to respond fully to requests for information about an alleged violation.

Amnesty International is advised that the Human Rights Committee has found that the rights of at least 53 people who had been sentenced to death had been violated. The Human Rights Committee's found violations of Articles 6, 7, 9, 14, and 10, and recommended remedies including commutation of death sentences, compensation and the release of over 20 prisoners. Amnesty International is deeply concerned about reports that the government has not implemented many recommendations of the Committee, and has frequently not even provided the grounds for its decision. This view was apparently shared by the Special Rapporteur for the follow-up of Views who stated, in a report following his mission to Jamaica in June 1995, that Jamaica's implementation of the views of the Human Rights Committee "still left much to be desired". (UN Doc A/50/40, paras 560).

A firm of London solicitors, who represent people sentenced to death in Jamaica, has advised Amnesty International that the Human Rights Committee has found violations of rights guaranteed by the ICCPR in relation to 23 men who the firm assisted to submit communications. The firm has informed Amnesty International that the

Jamaican Government has not acted on a single recommendation by the Human Rights Committee for a remedy in any of these cases. (See **Appendix 1**).¹

As described in Part III (a) (iii) below, the Jamaican Government has recently imposed short time limits on the process for prisoners to complain to the Human Rights Committee and the Inter-American Commission that their rights under the relevant instruments have been violated. Amnesty International considers that these time limits also constitute an unreasonable restriction on the effectiveness of the remedies available to people in Jamaica.

III. Article 6 of the ICCPR: The Right to Life

In this section, Amnesty International highlights its concerns about the retention of capital punishment; procedures applicable to people charged with and convicted of capital murder; killings in disputed circumstances by law enforcement officials and deaths in custody. Concerns about conditions of confinement on death row are described in Section IV, below.

a. The death penalty

a(i) Statutory provisions and current situation

The death penalty remains a lawful punishment in Jamaica, for people convicted of certain types of murder and high treason. The Offences Against the Person Act (Amendment) 1992 imposes a mandatory death sentence upon conviction of murder in the following circumstances, among others:

murder of a member of the security forces, a correctional officer, a judicial officer or Justice of the Peace acting in the execution of their duties or for any reason directly attributable to the nature of a their profession;

murder of a person attributable to their status as a witness in a civil or criminal proceedings or juror in a criminal trial;

murder committed by any person in the course or in furtherance of an act of terrorism; robbery; burglary; housebreaking; arson of a dwelling; any sexual offence.

In addition, Section 3 of the Offences Against the Persons (Amendment) Act 1992 provides that people who have been convicted of two or more non-capital murders, may be sentenced to death.

¹ However it should be noted in reference to the Committee's recommendation that Lloydell Richards' sentence be commuted (Comm. No 535/1993), that his sentence of death was reportedly commuted in accordance with the requirements of national law, before the publication of the Human Rights Committee's view.

According to information available to Amnesty International, as of 20 September 1997 there were 49 men sentenced to death in Jamaica. This is significantly fewer than in 1991, when there were more than 250 prisoners on death row. The reduction is principally attributable to two things. First, in 1992 Parliament amended the Offences Against the Person Act to classify some murders as non-capital. The amendment applied retroactively and resulted in the commutation of sentences to life imprisonment of a number of people who had been previously mandatorily sentenced to death. Second, in 1993 the Judicial Committee of the Privy Council (currently Jamaica's highest court which sits in England) decided, in the case of Pratt and Morgan v. the Attorney General of Jamaica, that executing a person who has spent a prolonged period on death row violates Section 17 of the Constitution of Jamaica, which prohibits "inhuman or degrading punishment or other treatment". In compliance with the guidance set out in this case, sentences of death of people who have served five years on death row in Jamaica are commuted to life imprisonment.

The last executions in Jamaica took place on 18 February 1988, when Stanford Dinnal and Nathan Foster were hanged. To date this year, the authorities have issued execution warrants for at least six men, Christopher Brown, Langford James, Leroy Lamey, Neville Lewis, Samuel Lindsay and Henry McKoy. All were moved to death cells, adjacent to the gallows, to await imminent execution. The executions have been stayed as a result of each of the prisoners having filed a petition for relief. Neville Lewis has a petition pending before the Inter-American Commission on Human Rights; the others have filed petitions that are pending before the Judicial Committee of the Privy Council.

Amnesty International is concerned that the authorities will act on their stated intention to resume executions as soon as possible, (e.g., The Gleaner "Opposition to hanging Resumption Pouring in", 21/1/97), in view of the upcoming general elections, public support for the death penalty and the rising rate of violent crime reportedly linked to political rivalries and drug and gang activities.

Amnesty International is aware of the serious problem of violent crime in Jamaica and shares deep concern for the victims of such crime and their families. However, there is no evidence that the death penalty deters crime more effectively than other punishments or that it serves any useful penological purpose. Amnesty International notes that in response to reservations about the deterrent impact of the death penalty, the Jamaican Government established an expert committee in 1980 chaired by H Aubrey Fraser, a former judge. Having studied the evidence, the committee was of the opinion that the death penalty for murder should be abolished. (A description of key findings of the Fraser Committee and other information about crime and the death penalty in Jamaica can be found in Amnesty International's report, **Jamaica: The Death Penalty**, AI Index: AMR 38/01/89.)

Amnesty International considers that the death penalty is a violation of the right to life and constitutes the ultimate cruel, inhuman and degrading punishment. It brutalises all involved in the process and can encourage a climate of violence and disrespect for human life. The organization opposes its use in all cases without reservation and is working for the permanent and total abolition of this form of punishment.

a(ii) Fair trial concerns

According to information received by Amnesty International, many of the people sentenced to death allege that their trials did not meet international fair trial standards. Many allege that they were ill-treated by law

enforcement officials upon arrest and/or in detention during investigations and that their confessions were extracted following ill-treatment, in violation of Articles 7 and 14(3)(g) of the ICCPR.

Over the years, many people who have been sentenced to death in Jamaica have been held for prolonged periods in deplorable conditions without being charged and/or without being promptly brought before a court and their trials have not been completed within a reasonable time. The Human Rights Committee recently considered a communication containing such allegations and concluded that Article 9, paragraph 2 and 3 and 14(3)(c) of the ICCPR had been violated (Patrick Taylor v. Jamaica, UN Doc: CCPR/C/60/D/707/1996, views adopted on 18 July 1997).

Many people claim that they have had inadequate time and facilities to prepare their defence and that they have not been effectively represented at trial and/or appeal by counsel. The Human Rights Committee has examined communications alleging such violations, and concluded that there were violations of Article 14 of the ICCPR in a number of cases, for example Carlton Reid v. Jamaica, Communication No. 250/1987; John Campbell v. Jamaica, Communication No. 307/1988; Trevor Collins v. Jamaica, Communication No. 356/1989; Leaford Smith v. Jamaica, Communication No. 282/1988 and Hezekiah Price v. Jamaica, Communication No. 572/ 1994.

In accordance with the Human Rights Committee's General Comment 6, para 7 and its jurisprudence, the imposition of a sentence of death on a person whose rights to a fair trial have been violated when no further appeal is possible constitutes a violation of their right to life, under Article 6 of the ICCPR. The Committee has concluded that Article 6 of the ICCPR was violated in a number of cases involving Jamaica, for example, Ricky Burrell v. Jamaica, UN Doc: CCPR/C/57/D/546/1993, views adopted on 18 July 1996; Patrick Taylor v. Jamaica, UN Doc: CCPR/C/60/D/707/1996, views adopted on 18 July 1997.

People sentenced to death have the right to appeal to the Court of Appeal of Jamaica. Over the years, the Human Rights Committee has concluded that many of these appeals have not been completed within a reasonable time e.g. Pratt and Morgan v. Jamaica, Communication No.s 210/1986 and 225/1987; Clement Francis v. Jamaica, Communication No. 606/1994; Eustace Henry and Everaldo Douglas v. Jamaica, Communication No. 571/1994; and Trevor Walker and Lawson Richards v. Jamaica, Communication No. 639/1995.

Upon receipt of a judgment dismissing an appeal to the Court of Appeal, people sentenced to death may petition for Leave to Appeal to the Judicial Committee of the Privy Council, which is currently Jamaica's highest court. The Judicial Committee of the Privy Council will only grant such leave in such cases presenting constitutional issues or matters of great public importance. The state does not provide legal aid to people who have been sentenced to death to pursue petitions for Leave or Special Leave to Appeal or for full hearings before the Judicial Committee of the Privy Council. Rather, people sentenced to death who seek to take proceedings to the Judicial Committee of the Privy Council depend on services provided by the Jamaican Council of Human Rights and lawyers, mostly from England, who have volunteered to act in these cases without charge.²

² The Caribbean countries have been discussing for about 12 years a proposal to replace the Judicial Committee of the Privy Council with a regional court, the Caribbean Supreme Court. In September, Attorneys General from 14 Caribbean countries decided to recommend that such a court be located in Trinidad. It is also proposed that this court will have jurisdiction over all criminal appeals, but that civil appeals will continue to be handled by the Judicial Committee of the Privy Council. It is also reported that the Legal Affairs Committee of CARICOM will recommend the establishment of a non-partisan legal services Commission to appoint all judges for this court, except the president, who would be chosen by the Heads of State from among this committee's nominees. The recommendations have not yet been approved by the Heads of Government and in order for the

Similarly, as mentioned in the discussion about Article 2(3) of the ICCPR, (see Part II (b), above), the state does not provide legal aid to people sentenced to death, who are without adequate resources and who seek to file constitutional motions. In the case of Patrick Taylor v. Jamaica, the Human Rights Committee concluded that it is a violation of Article 14 of the ICCPR to fail to provide legal aid to a person who has insufficient means to meet the costs of legal assistance necessary to pursue a constitutional remedy, where the interests of justice so require (UN Doc: CCPR/C/60/D/707/1996, at para. 8.2, views adopted in July 1997).

Over the last 10 years, an estimated 100 or more people sentenced to death in Jamaica have filed communications with the Human Rights Committee and/or the Inter-American Commission of Human Rights. While these communications provide a mechanism for safeguarding the human rights enshrined in international treaties, Amnesty International is aware that some people in Jamaica regard these fora as impediments to the imposition of the ultimate punishment, the death penalty. As mentioned in Part II (b) above, the government has failed to implement most of the recommendations made by the Human Rights Committee in relation to individual cases, thereby depriving death row prisoners of an effective remedy for violations of their rights under the Covenant, in violation of Article 2(3). In addition, as described below, the government recently issued instructions which, in essence, mean that the failure of either a death row petitioner or the Human Rights Committee and the Inter-American Commission to meet the time limits set out may lead to the execution of a person while his application is still pending .

a(iii) Time limits for recourse proceedings

The government has indicated its resolve to speed up the proceedings in death penalty cases in order to carry out executions. Accordingly, on 6 August 1997 the Governor General approved instructions which aim to ensure that "applications to the International Human Rights Bodies by or on behalf of Prisoners under sentence of death [are] conducted in as expeditious a manner as possible." The instructions were published in the Jamaica Gazette, and a copy is attached as **Appendix 2**.

According to the instructions:

a person under sentence of death who notifies the authorities of his intent to file an application (sic) to the Human Rights Committee or Inter-American Commission must, within **three weeks**, provide proof that an application has been filed (para. 2a and 7.)

unless the Jamaican Government receives a request for a response to the communication **and** a stay of execution from the body considering a petition within **one month** of the date that proof has been furnished that the application has been filed, the execution will not be further postponed (para. 3 and 8)

the government is to provide responses to requests for information from the Human Rights Committee or Inter-American Commission (as appropriate) within **one month** of the receipt of the request (para. 4 and 9)

court to be established several of the countries' Constitutions would have to be amended.

if a recommendation is received from the Human Rights Committee or the Inter-American Commission on Human Rights within **six months** of the government's response, the matter will be considered by the Privy Council who will advise the Governor-General about the implementation of the recommendation, under powers to exercise the prerogative of mercy (para 5)

if no recommendation is received within **six months** of the government's response to the body considering the petition, the execution will not be postponed unless the prisoner provides written notification of his intent to file a communication with a second international human rights body (para 6 and 10(b)).

Amnesty International welcomes the fact that the government has committed itself to responding within one month to requests for information by the Human Rights Committee and the Inter-American Commission in the context of consideration of communications by prisoners under death sentence. However the organization is in doubt about the government's authority to issue these instructions, is gravely concerned about their overall effect, and believes that they violate several provisions of the ICCPR.

As the instructions apply only to people who are sentenced to death who file petitions to the Human Rights Committee or the Inter-American Commission on Human Rights, and not to all persons filing such petitions, Amnesty International believes that they violate Articles 2(1) and Article 26 of the ICCPR which prohibit discrimination and guarantee equality before the law.

The organization also believes that the instructions present unreasonable and potentially impassable obstacles to people sentenced to death who seek recourse, to lawyers who agree to act their behalf and to the Human Rights Committee and Inter-American Commission. It is concerned that the instructions may discourage lawyers who most often act *pro bono* (because legal aid is not provided) from agreeing to bring petitions on behalf of prisoners sentenced to death, because they will be unable to prepare a communication within three weeks. The Jamaican Council for Human Rights and lawyers who have filed such petitions on behalf of people sentenced to death have informed Amnesty International of the difficulties they have encountered in acquiring all of the information and documentation necessary to draft petitions expeditiously. The organization believes that it is inevitable therefore that lawyers will decline to agree to undertake such work, knowing that the failure to file a petition in accordance with the time limits, through no fault of their own or of the petitioner, may well lead to the execution of their client.

In addition, Amnesty International is concerned that the six month period given for the Human Rights Committee and the Inter-American Commission to submit their conclusions and recommendations to the government may impede a thorough examination of petitions. Among other things, this time frame may be insufficient to allow for: the full investigation of the merits of the petition; a reply from the petitioner to the government's submission; a hearing or further written submissions and friendly settlement.

In the past the Jamaican Government granted and honoured requests for stays of execution made by the Human Rights Committee while it completed its consideration of communications. Amnesty International is concerned that failure to meet the time limits set out in the August 1997 instructions may now result in execution, even while recourse to the Human Rights Committee or Inter-American Commission is pending. Amnesty International believes that the execution of a person prior to the full determination of his communication to the Human Rights Committee would constitute the denial of an effective remedy for violations of rights under the

Covenant in violation of Article 2 of the ICCPR, and an arbitrary violation of the right to life, prohibited by Article 6 of the ICCPR.

a (iv) Procedure for grant of pardon

Amnesty International is concerned that the procedures for grant of pardon are inconsistent with Article 6(4) of the ICCPR.

When their appeals and recourse proceedings have been exhausted, people sentenced to death are considered for prerogative mercy. Under Articles 90 and 91 of the Constitution of Jamaica the Governor General is empowered to grant a pardon or commute a death sentence, on the advice of the (Jamaican) Privy Council. The (Jamaican) Privy Council, to be distinguished from the Judicial Committee of the Privy Council in England, consists of six members, appointed by the Governor General, after consultation with the Prime Minister. In the course of this procedure, the Governor General causes a written report of the trial judge and any other information to be forwarded to the Privy Council. People sentenced to death are not entitled to see the report of the trial judge or any other information supplied to the Privy Council, and therefore cannot challenge the accuracy of its contents. They have no right to appear in person or through counsel before the Privy Council or the Governor General in order to make representations about the issue of prerogative mercy. Legal aid is not provided to prisoners sentenced to death for the purpose of assisting them to prepare written representations for consideration by the Privy Council and Governor General. All of the deliberations regarding the prerogative of mercy are conducted in private and no reasons are given for the decisions taken.

b. Deaths involving law enforcement officials

During its examination of Jamaica's initial periodic report, the Human Rights Committee stressed that the government's duty to protect the right to life required the government to control the use of firearms by police.

According to official figures, 141 people reportedly were killed in encounters with law enforcement officials in Jamaica in 1996. Reports indicate that so far this year about 110 have been killed in encounters with law enforcement officials.

Amnesty International continues to receive reports about killings by police and other members of the security forces that allegedly involved the excessive use of force by the law enforcement officials. Generally, there are conflicting accounts of the circumstances of such killings. Reports often cite police accounts that such deaths occur during exchanges of gun fire and eyewitnesses' statements give a very different account of the events. Amnesty International is aware of the difficulties and dangers law enforcement officials in Jamaica face in fighting violent crime and is not often in a position to assess the conflicting accounts. However, the pattern of killings in such circumstances and the absence of prompt, thorough, independent investigations suggest that some may indeed amount to extrajudicial executions.

Following receipt of reports of killings by law enforcement officials in disputed circumstances in Jamaica, Amnesty International has urged the authorities to initiate a prompt, independent, impartial and thorough inquiry into the deaths and to inform the organization and the public of the outcomes of the investigations.

Amnesty International's calls are in accordance with international standards, including Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

These 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 be conducted in accordance with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and 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 Enforcement Officials.

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 (e.g., 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) Amnesty International calls on the authorities to bring to justice in the course of criminal and/or disciplinary proceedings any person reasonably suspected of having participated in a violation of the right to life.

Amnesty International is concerned that the information available to it indicates that, except in very few cases, the Jamaican authorities have not initiated independent and impartial investigations into cases of deaths in disputed circumstances involving the use of force by law enforcement officials. In some cases, like in the case of the death of Rohan Fraser described below, prosecutions have been brought against law enforcement officials; in others no law enforcement officials have been charged and no information has been provided to the public about the outcome of any inquest or investigation.

Recent examples of such deaths in disputed circumstances are described below.

b(i) Rohan Fraser

On 24 April 1997 Rohan Fraser was shot and killed by police in Tivoli Gardens, West Kingston. The Tivoli Gardens community is inhabited predominantly by supporters of the Jamaican Labour Party, one of the two current opposition parties, and is often referred to locally as a "garrison community". Initial police reports allegedly indicated that Rohan Fraser was wanted for a series of crimes including a murder committed in 1995. According to newspaper articles, initial police reports claimed that Rohan Fraser was shot and killed by police after he had aimed a gun at police who were conducting a house search, pursuant to a warrant. Other reports received by Amnesty International claim that Rohan Fraser was in a room in his girlfriend's home, with his hands in the air, when he was hit by 18 bullets fired by police. Subsequent reports indicate that three policemen, two from the Special Anti Crime Task Force and one from the Kingston West Division, have been charged in connection with his death.

b(ii) multiple deaths in Tivoli Gardens

Rohan Fraser's death sparked demonstrations in Tivoli Gardens on 24 April 1997, during the course of which it is reported that residents constructed roadblocks in the surrounding community and members of the police and members of the Jamaican Defence Force established a strong presence.³

³ It is reported that two men and a woman were shot and killed the same day during a police operation conducted by the Special Anti Crime Task Force in nearby Riverton City.

On 6 and 7 May 1997, the day before and of Rohan Fraser's funeral, there were firearms clashes between residents of Tivoli Gardens and members of the security forces. The reports allege that approximately 500 members of the security forces were in Tivoli Gardens on 6-7 May 1997, and that they attended either 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 for both reasons. However it is reported that no guns or ammunition were recovered by the security forces and no suspected gunmen were arrested.

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 at this time to assess which accounts are accurate. However, the organization 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 reportedly 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. It is reported that 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 reportedly 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.

Following these incidents there were calls for the government to establish an independent and impartial investigation by a Commission of Enquiry. The Governor General is authorised to appoint a Commission of Enquiry under Section 2 of the Commissions of Enquiry Act. However, it is reported that the Solicitor General advised the Governor General that he could only appoint a Commission of Enquiry after having received advice from the Prime Minister or Cabinet, which has not been forthcoming. Reports indicate that the Prime Minister concluded that the incidents should be investigated by the police, and to date a Commission of Enquiry has not been appointed. Amnesty International considers that a police investigation into these incidents does not fulfil the obligation of the government to initiate an impartial and independent investigation set out in international standards, because members of the police were directly involved in the conflict, during the course of which they used their firearms.

While it is reported that the police and the Jamaican Defence Force authorities initiated investigations into the incidents of 6-7 May 1997 in Tivoli Gardens, the Ministry of National Security and Justice was unable to inform the organization about the status of these investigations in September 1997. According to the information available to Amnesty International at the end of September 1997, the circumstances of the deaths of the four people and any findings of the police and/or Jamaican Defence Force investigations have not been made public, and no person has been charged with any offence in relation to the deaths.

Amnesty International remains concerned that the authorities have failed to initiate an independent, impartial investigation into the events, and that the findings regarding the circumstances of the deaths of three women and a child and the wounding of about 9 people have not been made public.

b(iii) Keith Francis

Keith Francis was shot and killed by members of the police on 16 October 1996. According to reports, the police claim that when they responded to a shooting, they detained a man and then were attacked by a crowd. The crowd allegedly took the detainee from police custody, and the police called for assistance. Keith Francis allegedly fired at police who came to assist. Police chased and cornered him in a shop. According to the police report, Keith Francis was killed in an ensuing exchange of gun fire. According to eyewitnesses however, Keith Francis was killed after having been detained by security forces, when he was not presenting a threat. Amnesty International requested information about the outcome of any investigation conducted into the death of Keith Francis. In a response dated 7 January 1997, the Commissioner of Police informed Amnesty International that "the matter is receiving attention", but has not to date informed the organization of the findings of any investigation.

b(iv) Tafari Lewis

On 25 July 1995, Tafari Lewis was shot dead by members of the security forces on South Street Andrew, in Rose Town. Police reportedly claim that he was shot by a joint military and police patrol, following an exchange of gunfire. Eyewitnesses quoted in a press report, however, claim that he was killed after he had already been detained. The authorities have not responded to Amnesty International's request for information about the outcome of the investigation into his death.

b(v) Other cases

The authorities have also not responded to Amnesty International's requests for information about the outcome of investigations into many other killings by law enforcement officials in disputed circumstances since 1990. For example, in January 1993 the organization requested information about 13 killings and in October 1995 the organization requested information about four other such cases.

c. Deaths in prison

Amnesty International is concerned about cases in which prison officers are alleged to have been responsible for the deaths of people imprisoned in Jamaica.

c(i) Amnesty International's 1993 report relating to St Catherine's District Prison

Amnesty International provided a detailed account of significant concerns in a document published in December, 1993, entitled **Jamaica: Proposal for an Inquiry into Deaths and Ill-treatment of Prisoners in St Catherine's District Prison**, (AI Index: AMR 38/04/93). Copies of this document have been provided to the members of the Human Rights Committee.

The document describes, among other things:

- the death on 9 September 1989 of a death row inmate named Phillip Leslie as a result of beatings inflicted with batons by prison warders;
- the deaths of Paul Gray, Calvin Green and Denny Wilson in May 1990 as a result of injuries allegedly inflicted by warders during a disturbance;
- the deaths of five inmates following disturbances in June 1991 reportedly as a result of assaults by a rival group of inmates who were reportedly armed and paid by warders to carry out the killings; and
- an incident in October 1993 in which four inmates, Ricky Burrell, Rohan Josephs, Arthur Morrison and Neville Neath, were fatally shot in their cells by prison warders.

Amnesty International was concerned that the investigations of the killings were delayed and not made public and that the systems for investigating complaints of abuses brought by prisoners did not adequately address allegations of abuses which had persisted over many years. It therefore called on the government to establish an independent Commission of Inquiry.

In response, the government informed Amnesty International that the Inspectorate Unit of the Ministry of National Security and Justice and the police had conducted investigations and it did not consider it necessary to initiate an independent inquiry. The government advised Amnesty International that:

- four officers were charged with manslaughter relating to the death of Philip Leslie;
- a Coroner's Inquest was held into the deaths in May 1990 and the Coroner's jury found individuals criminally responsible;
- the Inspectorate Unit's investigation of the deaths of 4 prisoners in June 1991 did not find any officer responsible for contributing to the disturbance and had been referred to the Director of Public Prosecutions;
- investigation reports of the deaths of 31 October 1993 by the Inspectorate Unit and the police were forwarded to the Director of Public Prosecutions for a ruling.

The Minister of National Security and Justice also informed Amnesty International on 15 June 1994, *inter alia*, that "[e]fforts are in top gear to improve the conditions of prisons generally through education, upgrading the facilities, disciplinary measures and instilling change in attitude and professional conduct." However, as described in Part V of this document, the organization continues to receive complaints of ill-treatment and poor conditions.

Concerning Ricky Burrell, one of the prisoners killed on 31 October 1993, Amnesty International notes that in the course of the examination of a communication brought on Ricky Burrell's behalf to the Human Rights Committee (Communication No. 546/1993), the government reported that Ricky Burrell was not involved in the commencement of an altercation that led to his death and that a post-mortem report (which was not provided to the Committee) showed that he died as a result of shotgun and blunt force injuries. The Human Rights Committee noted that the state "acknowledged that Mr Burrell's death was the unfortunate result of confusion on the side of the warders, who panicked when seeing some of their colleagues being threatened by inmates" and the warders continued shooting after their colleagues had been rescued. The Committee concluded, *inter alia*, that the state failed to take effective measures to protect Ricky Burrell's life in violation of Article 6(1) of the ICCPR and recommended that compensation be paid to Ricky Burrell's family. Further, it noted the state's obligation to ensure that similar violations do not occur in the future (Ricky Burrell v. Jamaica, (UN Doc: CCPR/C/57/D/546/1993, views adopted on 18 July 1996).

c(ii) Death of a prisoner and injuries, February 1995

Amnesty International received reports that on 28 February 1995, there was a disturbance in St Catherine's District Prison during which a prisoner was shot dead by warders and others were wounded by beatings inflicted by warders. In response to letters from Amnesty International members concerning this incident and one in March 1995 during which prisoners were reportedly beaten (see Part IV (b)(ii) below), the Department of Correctional Services advised that the police were investigating the events and that measures were being taken to ensure better control inside the institution and the safety of all prisoners. The Department also stated that it is "totally against inhumane, cruel and any abuses against inmates" and that the record would show that "serious disciplinary action has been taken against offenders of unprofessional conduct". Amnesty International has not, however, received information about the outcome of these investigations or specific measures taken in relation to these two incidents.

d. Deaths of 16 prisoners and injuries, August 1997

Amnesty International is deeply concerned about the circumstances and incidents which resulted in the deaths of 16 prisoners and reportedly the wounding of more than 40 other prisoners in two maximum security prisons, St Catherine's District Prison and Kingston's General Penitentiary, between 20-23 August 1997. It is reported that many deaths and injuries resulted from fighting between prisoners following a walk-out of guards from 19-22 August. Reports indicate that many of those killed were targeted because they were suspected of being homosexuals. Reports state that about 25 prisoners have been charged in connection with the deaths. It is also reported that during this period about 8 prisoners were injured by shots fired by law enforcement officials at the General Penitentiary, where the security forces were reportedly armed only with firearms.

Reports received by Amnesty International about the circumstances in which prisoners killed and wounded each other give rise to concerns that the authorities failed to take all possible measures to exercise their duty to ensure the safety and security of prisoners in their custody. It is reported that the violence occurred notwithstanding the presence of a large number of police and army personnel, and prison officers following their return to work.

Further, it is reported that the authorities were aware that Dennie Chaplin, one of the prisoners who was killed, was at serious risk from other prisoners in the General Penitentiary. Dennie Chaplin had been assaulted by inmates at the South Camp Rehabilitation Centre in 1995. Following this incident, the prisoners allegedly responsible for the assault were transferred to the General Penitentiary. They were still reportedly there when the authorities transferred Dennie Chaplin to the General Penitentiary in March 1996, notwithstanding protests by his counsel. Following his transfer, Dennie Chaplin's counsel specifically requested that the authorities take measures to protect Dennie Chaplin from brutality and threats from other inmates. Subsequent to his death, counsel for Dennie Chaplin have repeated their request for an explanation of the reasons why Dennie Chaplin was transferred to the General Penitentiary, despite the presence there of prisoners from whom he required protection, and for the cause of his death to be disclosed. Dennie Chaplin's lawyers have not yet received a response to their requests to be informed by the authorities of the circumstances of his death.

On 9 September 1997, the Minister of National Security and Justice announced that a three-person Board of Enquiry would be appointed to investigate the causes and circumstances which led to the disturbances. It was announced that the Board would be asked to present its findings and recommendations within a month of the commencement of the enquiry.

Amnesty International welcomes the announcement and hopes that the Board will be constituted and empowered so that it can conduct an independent, impartial and thorough investigation of the circumstances of each of the deaths and wounding of prisoners so as to determine, among other things, whether the prison guards and law enforcement officials acted in accordance with international standards relating to the treatment of prisoners and to the use of force. The organization also hopes that the Board of Enquiry will make recommendations to improve the conditions of confinement and the security of all prisoners confined in St Catherine's District Prison and Kingston's General Penitentiary. Amnesty International urges the government to make the scope, methods and findings of the Board of Enquiry public and to implement without delay recommendations aimed at improving the conditions of confinement and enhancing the safety and security of prisoners.

IV. ICCPR Articles 7 (prohibition of torture) and 10 (humane treatment of detainees and prisoners)

Amnesty International is concerned that Jamaica is not fully implementing Articles 7 and 10 of the ICCPR, which prohibit torture and other cruel, inhuman or degrading treatment or punishment and impose an obligation on the government to ensure that all people deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person. This concern is based, *inter alia*, on the fact that corporal punishment remains a lawful penal sanction which continues to be imposed; the organization continues to receive reports of allegations of ill-treatment by Jamaican law enforcement officials; and prisons and other facilities where people are deprived of their liberty remain overcrowded and in sub-standard conditions.

a. Corporal punishment

Amnesty International is concerned that Jamaica violates the rights recognized in Articles 7 and 10(1) of the ICCPR by maintaining laws permitting sentences of corporal punishment to be imposed and inflicted. Section 3 of the Crime (Prevention of) Act 1942 provides that a court may order the flogging or whipping of a person who is convicted of specified offences. The imposition of the penalty of flogging is governed by the Flogging Regulation Act. Section 4 of this Act indicates that flogging may also be imposed on male prisoners for violations of prison regulations.

In response to concerns expressed by Amnesty International, the Ministry of Justice stated in 1995 that corporal punishment remains constitutional under Section 17(2) of the Constitution of Jamaica. This provision preserves the constitutionality of laws which were valid prior to independence, even if they might today be considered to constitute torture or inhuman or degrading treatment. The Ministry also informed Amnesty International that in the course of its consideration of far reaching constitutional amendments, it had already been agreed that such savings clauses should be abolished. To date, however, no such amendment has come to a vote.

According to reports received by Amnesty International, following a hiatus of about 20 years, in 1994 courts resumed the imposition of sentences of whipping. These sentences are in addition to terms of imprisonment and are to be imposed in the prison in which the person is confined. People who have been sentenced recently to flogging include Errol Pryce, who was sentenced on 8 August 1994 and was subjected to 6 strokes with a tamarind switch on 28 February 1997; Milton White, Windel Cunningham and Everett Grey who were sentenced on 29 September 1994; Bill Robinson who was sentenced on 30 September 1994; George Osbourne, who was sentenced on 20 October 1994; and Barrington Keslow, who was sentenced on 21 February 1995.

Errol Pryce and George Osbourne have both filed petitions with the Human Rights Committee, which are pending. Errol Pryce's petition includes an affidavit which describes the circumstances of his whipping. These include that, on the day before his scheduled release from a term of imprisonment, with no clothing on the lower part of his body he was blindfolded, his penis was placed in a slot in a barrel, he was strapped to the barrel and then whipped by a person wearing a hood which covered his face and a long gown concealing his body. The punishment was inflicted in the presence of an estimated 25 prison staff. George Osbourne has not yet been flogged and has requested the Human Rights Committee to recommend to the Government of Jamaica that the sentence be quashed as contrary to the ICCPR.

Amnesty International considers that the imposition of corporal punishment is contrary to Articles 7 and 10(1) of the ICCPR. In its General Comment 20 on Article 7, the Committee emphasized that the absolute prohibition of cruel, inhuman or degrading punishment in Article 7 of the ICCPR "must extend to corporal punishment." This contention is strongly supported by other expert bodies and international jurisprudence, e.g. the UN Commission on Human Rights, resolution 1997/38 of April 1997; Nigel Rodley, Special Rapporteur on Torture, in his report to the Commission on Human Rights, 10 January 1997 E/CN.4/1997/7; the European Court of Human Rights in Tyrer v The United Kingdom, Application no. 2865/72, European Court of Human Rights, Series B, No. 24.

Amnesty International considers that whipping is intrinsically a cruel, inhuman and degrading punishment which is aggravated by the circumstances in which it is imposed in Jamaica, which are described in the affidavit from Errol Pryce, outlined above.

b) Ill treatment of detained and imprisoned people

Amnesty International continues to receive allegations that people are ill-treated by law enforcement officials in the course of and/or following arrest. According to reports such ill-treatment often results in "confessions", the voluntariness of which is often disputed. The organization is aware that the Human Rights Committee has also considered numerous cases of allegations of ill-treatment following arrest in Jamaica, e.g. Michael Adams v Jamaica, referred to below.

Amnesty International has also received reports from people who allege that they have been subjected to ill-treatment in prison. Amnesty International documented cases of alleged ill-treatment in the St Catherine's District Prison in its report, **Jamaica: Proposal for an inquiry into deaths and ill-treatment of prisoners in St Catherine's District Prison**, referred to above (Part III (c)(i)). The report detailed allegations that prison officers had destroyed prisoners' legitimate property during cell searches and allegations that a group of warders referred to as "the Viper Squad" had threatened and beaten inmates. Amnesty International expressed concern that the systems in place to investigate and prevent recurrence of such conduct were inadequate.

Following the publication of the report the authorities informed Amnesty International that it was making efforts to improve the attitudes and professional conduct of prison employees. However, as indicated below, the organization has continued to receive allegations that prisoners are being ill-treated by prison officers at St Catherine's District Prison and other prisons.

b(i) Michael Adams

An illustrative case of alleged ill-treatment upon arrest and then in prison is that of Michael Adams, some of whose allegations of ill-treatment have been considered by the Human Rights Committee. In the case of _

Michael Adams v. Jamaica , (UN Doc: CPR/C/58/D/607/1994), the Human Rights Committee concluded that there was a violation of Articles 7 and 10 of the ICCPR, *inter alia*, because Michael Adams was beaten by police while detained in police stations following his arrest. The Committee also found that Michael Adams had been ill-treated in St Catherine's prison following his conviction, and recommended that he be paid compensation. Amnesty International has recently received reports that, subsequent to the publication of the Human Rights Committee's decision and his transfer from St Catherine's Prison to the South Camp Rehabilitation Centre, Michael Adams has received death threats and has been verbally harassed by a prison warden. Reports indicate that this treatment is related to his having complained about the ill-treatment he had sustained while at St Catherine's District Prison and the resulting criminal charges pending against a prison officer.

b(ii) Incident in St Catherine's District Prison, March 1995

Amnesty International received reports that during a search of the prison on 1 March 1995, a staff warden ordered another staff member to beat two prisoners, Vivien Goods and Author Henry, who had reportedly been accused of killing one of the staff warden's relatives. The authorities have not yet responded to requests for information about the outcome of their investigation of the incident.

b(iii) Incidents in St Catherine's District Prison, March 1997

Amnesty International received reports that on March 5 1997, following an unsuccessful escape attempt by four inmates, several prisoners on death row were subjected to ill-treatment by guards during cell searches for contraband. This conduct reportedly occurred in the presence of high ranking prison officials. Among those reportedly beaten were Desmond Taylor, Neville Whyte, Peter Blaine, Floyd Howell, Beresford Whyte and Everton Morrison, who were not named by the authorities as having been involved in the escape attempt. Some of the injured men were treated by the prison doctor and several were transferred to the hospital for treatment; others complain that their injuries were not treated.

The authorities reported that during the cell searches a quantity of knives, improvised cutlasses, ropes, hack saw blades and other contraband was found and confiscated. Amnesty International also received reports that during the searches prisoners' legitimate property, including legal and personal correspondence, books and personal effects including bedding, toilet paper, soap, toothpaste and toothbrushes and clothing, were removed from cells and burned by prison employees. Later reports indicated that about 27 prisoners on death row lost legal documents in the course of this incident, including the names and addresses of their lawyers. The authorities have stated that an internal investigation and an investigation by the Inspectorate Division of the Minister of National Security and Justice were conducted, but Amnesty International has not received any information about the results of these investigations or any measures which may have been taken to bring to justice those alleged to have been responsible for ill-treatment and to compensate prisoners for legitimate property that was confiscated and/or destroyed.

b(iv) Threats against Samuel Lindsay

Amnesty International received reports that prison warders had threatened and taunted Samuel Lindsay, a prisoner on death row in St Catherine's District Prison, in 1997. The reports indicated that the taunts and threats continued during the period that Samuel Lindsay spent in a cell adjacent to the gallows, following the reading of a warrant for his execution. The organization has asked the authorities to inform it of measures taken to investigate

the allegations, to ensure Samuel Lindsay's safety, to protect him from reprisals and to offer him counselling to deal with the trauma he reportedly suffered. The authorities have not yet responded.

c. Conditions in detention and prisons

Amnesty International is concerned about conditions in pre-trial detention facilities and prisons in Jamaica which, in some instances, are so poor that they amount to cruel, inhuman or degrading treatment or punishment. The poor state of conditions of confinement has been the subject of both internal investigations and reports by human rights bodies and organizations over a number of years. Indeed, in a number of cases, the Human Rights Committee has concluded that the conditions of confinement in various places where people are detained and imprisoned in Jamaica violate Articles 10 and 7 of the ICCPR.

Amnesty International notes the Human Rights Committee's General Comment 21 par 4 on Article 10 of the ICCPR that the obligation on states to treat all detained and imprisoned people with humanity and respect for the inherent dignity of the human person is a basic standard of universal application which cannot depend entirely on the material resources of a state. States are obliged to provide all detainees and prisoners with services that will satisfy their essential needs. Notwithstanding these obligations, the conditions in many places of detention and imprisonment fail to meet the Standard Minimum Rules for the Treatment of Prisoners.

c(i) Conditions in pre-trial detention

Reports received about conditions in police stations and jails where people are detained after arrest and prior to trial indicate that these facilities are overcrowded and unsanitary. Detainees reportedly spend most of or all day locked in overcrowded cells. Most reports allege that cells are not equipped with bedding, so detainees are forced to sleep on the concrete floor; some report that detainees have used newspapers as a bed. Reports also allege that cells are not equipped with toilets and that detainees are not provided with buckets in which to relieve themselves. One person recounted that in the Half Way Tree Lock Up, where he shared a cell with up to 14 other men, they deposited human waste in used fruit juice cartons; when he was transferred to the General Penitentiary, where he was detained in an insect infested cell with three other inmates, he was provided with a soda bottle to pass urine in. The Human Rights Committee recently considered a communication from Peter Blaine, who complained of having to share a small cell for three months with six other people and sleeping on newspapers on the floor. The Committee found that the conditions violated Article 10 of the ICCPR (Peter Blaine v. Jamaica, UN Doc: CPR/C/60/D/696/1996).

c(ii) Conditions in St Catherine's District Prison

Despite statements made by the authorities in 1994 that measures were being taken to improve conditions see Part III (c)(i), above), Amnesty International continues to receive reports which indicate that the conditions of confinement in St Catherine's District Prison fall well below international minimum standards and constitute violations of Articles 10 and 7 of the ICCPR.

Reports indicate that cells in the Gibraltar Block of St Catherine's District Prison, where prisoners sentenced to death are confined most of the day, measure about six feet by nine feet. Some of the cells reportedly are not equipped with electric lighting. The only natural light in the cells comes through small grilles located high up in a corner of the back wall, which are often caked with dirt. As a result of inadequate lighting, many

prisoners have reported that they have suffered loss of vision and other problems with their eyes. Such conditions do not conform to Rule 11 of the Standard Minimum Rules for the Treatment of Prisoners.

The unit is described as lacking in air. Sanitation is poor. Inmates are provided with buckets to relieve themselves. They are forced to keep these buckets in their cells when they are locked-in each afternoon following their last meal, at about 4pm, until they are allowed to empty them the next morning. Amnesty International also received information about the presence of a gully which runs in front of cells, which is filled with stagnant liquid which emits an obnoxious odour. Such conditions do not comply with Rule 12 of the Standard Minimum Rules for the Treatment of Prisoners.

Mattresses are reportedly not routinely provided by the authorities. Some prisoners were given sponge mattresses by their families but many of them were confiscated and burned on 5 March 1997. (See Section IV b(iii), above). It is reported that prisoners, who lost sponge mattresses or do not have them, sleep on the concrete slab in their cell, which some have covered with cardboard or newspaper. This does not comply with Rule 19 of the Standard Minimum Rules for the Treatment of Prisoners.

Many reports complain about inadequate and unpalatable food and lack of access to medical treatment. Prisoners report not receiving prescribed medicine or being given medication whose expiry date has passed. Reports also allege lack of access to specialized medical and health care such as eye doctors (and the provision of glasses) and dentists free of charge. These conditions do not comply with Rules 20 and 22 of the Standard Minimum Rules for the Treatment of Prisoners.

Amnesty International has received similar reports about conditions in Kingston's General Penitentiary.

V. ICCPR Articles 17 (right to privacy), 2(1) (prohibition of discrimination) and 26 (equality)

Criminalization of consensual sexual acts between adult men in private

Amnesty International is concerned that sexual acts in private between consenting male adults remain criminalized and punishable by imprisonment pursuant to Sections 76-82 of the Offences against the Person Act.

Article 76 of the Offences against the Person Act 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' imprisonment with or without hard labour.

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

As noted by the Human Rights Committee in 1981, the Constitution of Jamaica does not provide the same protections as Articles 2(1), 17 and 26 of the ICCPR. In contrast with Article 2(1) of the ICCPR, Section 24 of the Constitution of Jamaica, does not prohibit discrimination on the basis of sex. Furthermore, contrary to Article 2 of the ICCPR, Section 24 (7) of the Jamaican Constitution permits restrictions of a discriminatory

character with regard to the right to privacy. Constitutional protection of the right to privacy under Section 19 of the Constitution of Jamaica is subject to restrictions, which are reasonably required, *inter alia*, in the interests of public health or public morality.

Amnesty International notes that in March 1994, in its ruling in the case of Toonen v. Australia, UN Doc: CPR/C/50/D/488/1992, the Human Rights Committee found that provisions of the Tasmanian Criminal Code criminalizing consensual homosexual relations between adults in private violated Articles 2 (1) and 17 of the ICCPR.

Article 2(1) of the ICCPR provides that a state party must ensure to all individuals the rights recognized in the ICCPR without distinctions including sex; Article 26 provides for the right to equality before the law, without discrimination on grounds including sex. The Committee noted that, in its view, the prohibition of discrimination on grounds of "sex" referred to in Articles 2 and 26 of the ICCPR "is to be taken as including sexual orientation", (*id* at para 8.7).

Article 17 of the ICCPR provides that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy". The Committee considered that consensual sexual activity in private was indisputably covered by the concept of privacy. It rejected the two justifications advanced by the Tasmanian authorities for restricting this right with regard to homosexuals, preventing the spread of AIDS/HIV and the protection of public morals. With respect to the first justification, the Committee concluded that criminalization was not "a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV". It expressed the view that the criminalization of homosexual acts would "appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention, and noted that "no link has been shown between the continued criminalization of homosexual activity and the effective control of the spread of the HIV/AIDS virus", (*id*, at para 8.5). The Committee also disagreed with the second justification advanced by the government, that legislation was essential for the protection of public morals, in view of, *inter alia*, the non-enforcement of these laws in Tasmania. The Human Rights Committee stated that an effective remedy for the violation of this right to privacy was the repeal of the relevant legal provisions.

Since its decision in the case of Toonen v. Australia, the Human Rights Committee has also criticised legislation in several states in the United States which outlaw same-sex relations between consenting adult partners in private (UN Doc: CPR/C/79/Add 50, at para 22).

Amnesty International does not have information about recent prosecutions of men for consensual homosexual activity in private in Jamaica. However, if a person was to be imprisoned under these provisions as a result of consensual sexual activity between adults conducted in private, the organization would regard him as a prisoner of conscience, imprisoned in violation of Articles 2, 17 and 26 of the ICCPR, and would call for his immediate and unconditional release.

Whether or not the legislation is actively enforced, Amnesty International is concerned that the very existence of the laws and the possibility of prosecution under them remain a threat to the liberty, private lives and freedom from discrimination of adult homosexuals. The organisation notes that the government refused to entertain the repeal of the provisions criminalizing homosexuality when tabling proposals to amend other provisions of the Offences Against the Persons Act in 1993. Amnesty International considers that the retention of laws that treat people who are homosexual 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 homosexual, are likely to occur.

Amnesty International's concern about the vulnerability of homosexuals in Jamaica is heightened by reports about the circumstances of the violence that erupted at St Catherine's District Prison and Kingston's General Penitentiary between 20-23 August, described above in Part III (d), above. The reported catalyst of the events was a statement by the Commissioner of Corrections on 19 August 1997 that he was contemplating distribution of condoms to prisoners and guards, in pursuance of programme to control the spread of HIV and AIDS. Correctional officers allegedly were greatly offended by the statement because it implied that they were engaging in sexual relations between men. They walked off their jobs and did not return until 22 August, following an apology from the Commissioner and an agreement that condoms would not be distributed in prisons. In the interim, violence erupted between prisoners and it is reported that of the 16 prisoners killed, many had been targeted because other prisoners suspected that they were homosexuals.

VI. ICCPR Article 40: Obligation to Report

The Human Right Committee's ability to monitor the implementation of the ICCPR depends to a significant extent on State Parties providing reports as required under Article 40 of the ICCPR. Jamaica was due to provide its second report in 1986 and its third report in 1991 and failed to do so. Amnesty International concurs with the concern expressed by the Chairman of the Human Rights Committee about the impact of the government's failure to provide the reports.

In the case of the present communication, and of the many which have been submitted during the last decade, it is regrettable that the State party, by refusing for the past 10 years to comply with its obligation to report to the Human Rights Committee under article 40 of the Covenant, has denied the Committee the opportunity to pronounce on the application of the death penalty in Jamaica as part of the procedure for consideration of reports. This means that, for 15 years, the Human Rights Committee has been prevented from considering whether the death penalty is imposed in Jamaica in accordance with the strict limits imposed by the Covenant. (*Johnson v Jamaica* Communication No.588/1994, individual opinion of Francisco Jose Aguilar Urbina at page 15 paragraph 4).

Amnesty International reiterates its hope that the filing of the periodic report currently under examination by the Human Rights Committee is a signal that the Jamaican Government is prepared to take measures to ensure fuller implementation of the provisions of the ICCPR in line with the observations of the Human Rights Committee, to provide information to the Human Rights Committee and to implement recommendations of the Human Rights Committee in the context of individual cases.