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# **amnesty international**

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## **Jamaica**

### **Submission to the UN Universal Periodic Review**

**Ninth session of the UPR Working Group of the  
Human Rights Council  
November-December 2010**



**Executive summary**

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:<sup>1</sup>

- In Section B, Amnesty International raises concerns about the new Charter of Fundamental Rights and Freedoms, a series of “anti-crime” bills, the death penalty, the restrictive definition of “rape” in the new Sexual Offences Act, legislation which criminalizes sexual acts in private between consenting male adults, and outstanding ratifications.
- Section C highlights Amnesty International’s concerns in relation to human rights violations by the police; violence against women and girls; attacks against lesbian, gay, bisexual and transgender persons; children in custody; and violence in inner-city communities.
- In section D, Amnesty International makes a number of recommendations for action by the government.

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<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

# Jamaica

## Amnesty International submission to the UN Universal Periodic Review

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### **B. Normative and institutional framework of the State**

#### **Legal reform: Charter of rights**

A new Charter of Fundamental Rights and Freedoms was presented to Parliament in April 2009 and remains under consideration. The Charter, which is intended to replace Chapter III of the Constitution, has been criticized by national human rights organizations on the grounds that it is too limited in scope and not the subject of public consultation.

#### **“Anti-crime” bills**

A raft of so-called “anti-crime” bills – including extension of police powers of arrest, increases in bail periods and minimum sentences for gun-related crimes – were tabled in the Parliament in 2008. National human rights organizations have questioned the constitutionality of some of the bills’ provisions and expressed concerns that the proposed extra police and judicial powers could breach human rights obligations and standards, including the principle of proportionality and individualisation of restrictions on human rights, the principle of presumption of innocence and fair trial standards.

#### **Criminal justice**

In an attempt to address the justice system’s multiple weaknesses, in 2006 the government set up the Jamaican Justice System Reform project to undertake a comprehensive review of the justice system and to develop strategies and mechanisms for its modernization. In June 2007, the Justice System Reform Task Force issued a detailed set of recommendations which, if implemented, could significantly improve access to justice for victims of criminal violence and human rights violations. According to a statement made by the Minister of Justice in November 2009, the implementation of over 70 of the 200 recommendations has been initiated.

Crucial pieces of legislation to enhance police accountability have been passed to Parliament, including a bill creating the Office of the Special Coroner to expedite judicial investigations into cases of fatal police shootings and a second bill establishing the Office of the Special Prosecutor for Corruption tasked with investigating and prosecuting corruption in both the public and private sectors. The first bill was passed by Parliament, but the office had not yet been established by the end of March 2010. The second bill, tabled in Parliament in May 2008, has still not been adopted.

#### **The death penalty**

Although the last execution was carried out as far back as 18 February 1988, death sentences continue to be handed down by the courts. At the end of 2009 there were four prisoners on death row. Support for the death penalty is high both among the general public and decision-makers.

In 2008, the Jamaican Parliament voted in favour of retaining the death penalty. In July 2009, the Prime Minister declared that the government would honour Parliament’s decision in 2008 to retain the death penalty by resuming executions as soon as the appeal avenues available to death row prisoners were exhausted.

Jamaica, along with much of the Caribbean region, voted against the 2007 and 2008 UN General Assembly resolutions calling for a moratorium on executions.

Amnesty International opposes the death penalty in all circumstances as a violation of the right to life and the ultimate cruel, inhuman or degrading punishment. The organization also strongly believes that the use of the death penalty is not an effective method of preventing crime.

#### **Violence against women and girls**

Amnesty International welcomes that the Jamaican Parliament passed the Sexual Offences Act in July 2009. The bill was finalized in 2007 and is the culmination of efforts dating back to 1995 to reframe existing gender-discriminatory legislation. The Sexual Offences Act reforms and incorporates various laws relating to rape, incest and other sexual offences. Although the Act was welcomed by women's organizations they also expressed concern about the restrictive definition of rape. The Act criminalizes rape within marriage, but only in certain circumstances.

#### **Human rights of lesbian, gay, bisexual and transgender persons**

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 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 in Articles 2(1), 17 and 26 of the International Covenant for Civil and Political Rights to which Jamaica is a party.

#### **Ratification of international human rights standards**

Jamaica has yet to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

Jamaica does not recognise the jurisdiction of the Inter-American Court of Human Rights. As a consequence, individuals, or organizations acting on behalf of individuals, can only take matters to the Inter-American Commission on Human Rights, which has fewer powers than the Court.

### **C. Promotion and protection of human rights on the ground**

#### **Human rights violations by police**

Amnesty International is greatly concerned by the large number of people killed by the police every year. According to official statistics, the number was record high in 2007, when 272 persons died as a result of use of force by the police; 224 were killed in 2008 and 253 in 2009. In most cases, the police forces justified these killings as the result of shoot-outs with gunmen, especially in the context of gang violence in marginalised inner-city communities. However, the high number of killings, the virtual absence of injuries or fatalities of police officers, combined with eyewitness testimonies and other evidence, indicate that many of the killings, whether in alleged shoot-outs or in other circumstances, involved excessive use of force by the police and that, in many cases, they amounted to unlawful killings, including extrajudicial executions.

For example, Anthony Nelson was shot dead by the police on 7 January 2009 on a construction site at Central Village, St Catherine. His companion, Ricardo Suckoo, was seriously injured. Police officers reported that the two men fired at them after being questioned for acting suspiciously. However, according to witnesses, the men were unarmed and the police shot at them after asking what they were doing on the site. A ruling by the Director of Public Prosecutions on whether to pursue criminal proceedings against the police officers is still pending.

In another incident, Dane Daley was fatally shot by the police on 27 May 2009 in Portmore, St Catherine, as he was on his way to the shops with his two cousins, Tyrell and Jordan Thompson. According to Tyrell Thompson, they were stopped and ordered not to move by four armed men, whom they could not identify because it was dark. They started to run away before realizing that the men were police officers. Dane Daley was shot in the head and abdomen and died. Tyrell Thompson was shot and injured. Residents in the area said that the police were patrolling the area following previous incidents of gang shootings. An investigation into the shootings was continuing by April 2010.

Despite the fact that every year around 12 per cent of all killings are attributed to the police, convictions of police officers for unlawful killings are extremely rare. In the past 10 years, only four police officers have been convicted for their involvement in killings out of a total of more than 1,900 reports of fatal shootings. Flawed investigations, corruption and a failing justice system are among the main factors contributing to impunity for such crimes.

In response to repeated complaints by both national and international human rights organizations about shortcomings in the investigation of alleged misconduct and allegations of human rights violations by members of the police forces, the government has proposed the creation of an Independent Commission of Investigation. The bill was passed by the Parliament in March 2010 after almost two years' discussion and is now waiting to be enacted.

A process of reform of the Jamaica Constabulary Force (JCF), responsible for all law enforcement officials, is currently ongoing, based on recommendations made during the strategic review of the JCF. The recommendations aim at improving the responsiveness and accountability of the force, such as recruitment, training, professional development, performance appraisal, the disciplinary system and vetting.

### **Violence against women and girls**

Amnesty International is concerned at the high incidence of sexual violence against women and girls in Jamaica. In 2009, according to national police statistics, 610 cases of rape and 511 cases of carnal abuse were reported. Even though the numbers declined in 2009 compared to 2008, the Minister of Youth, Sport and Culture, who is also responsible for women's affairs, acknowledged in an interview on the eve of women's day celebrations in 2010 that the rates were still too high. Women's organizations believe that many sexual crimes still go unreported, despite some improvements in police reception of cases.

Sexual crimes against children are widespread, with girls primarily the victims. According to data published by UNICEF, in 2006 young and adolescent children made up an alarming 78 per cent of all the sexual assault and rape cases admitted to public hospitals. In the same year, girls under 16 years of age accounted for 32 per cent of all sexual assaults in Jamaica.

Women and girls in inner-city communities are particularly exposed to gang violence. They are often victims of reprisal crimes, including sexual violence, for being perceived as having reported or actually reporting criminal activity to the police, or in relation to a personal or family vendetta. Women and girls often experience sexual coercion by gang members, as refusal could result in punishment against themselves and their families. A study on the relationship between adolescent pregnancy and sexual violence carried out by healthcare researchers in

2009 showed that 49 per cent of the 750 girls, aged between 15 and 17, who were surveyed had experienced sexual coercion or violence.

Positive steps over recent years in combating sexual violence and providing assistance to victims include the establishment of the Centre for Sexual Offences and Child Abuse (CISOCA), within the police service, which is responsible for counselling victims and investigating sexual crimes; the implementation of several awareness-raising and education programmes under the supervision of the Bureau of Women Affairs; and the adoption in July 2009 of the Sexual Offences Act. However, the high incidence of violence, combined with the low clear-up rate for sexual crimes and reticence in reporting of sexual crimes, suggests that more vigorous efforts are needed to enforce the law and to bring perpetrators to justice. According to many women's organizations, more resources should be invested in promoting rights awareness among women and girls and in the creation of more shelters for women victims of violence (there is currently only one shelter located in Kingston).

### **Human rights of lesbian, gay, bisexual and transgender persons**

The criminalization of consensual sex between men in Jamaica promotes a climate of prejudice in which discrimination, physical attacks and other abuses against people who are or believed to be homosexual, are likely to occur. Amnesty International is particularly concerned by reports of mob violence against persons perceived as homosexuals who are targeted because of their appearance or behaviour.

On 2 April 2007, a crowd threw stones and bottles at a group of costumed men who were dancing in the carnival procession in Montego Bay. The crowd was apparently angered because the men were supposedly gyrating in a sexually suggestive manner and demanded that they leave the stage. According to eye-witnesses, the men were attacked, chased and beaten by a mob of around 30 or 40 people. At least one of them was injured and had to be hospitalized.

In another incident, on 8 April 2007, a crowd surrounded a church in Mandeville and hurled objects through a window at the back of the church. The attacks were directed at persons attending the funeral of someone, who the crowd believed to be homosexual.

These two incidents occurred only two months after a group of men were targeted in a similar manner in a pharmacy in Tropical Plaza, Half-Way Tree, in Kingston. A human rights defender told Amnesty International that a mob of at least 200 people gathered outside the store, calling for the men to be beaten to death because they were, or were presumed to be, homosexual. They had to remain in the pharmacy until the police escorted them out.

Amnesty International is also concerned that statements made by public figures further foment this climate of prejudice. During a parliamentary debate in 2009, a member of Parliament questioned the right of gay men and lesbians to form organizations and demanded life imprisonment for homosexual acts. The Prime Minister, while distancing himself from these comments, made it clear that his government would not repeal the crime of buggery.

### **Children in custody**

Amnesty International is concerned about juvenile detention conditions which appear to breach international standards.

Cases have been reported by national human rights organizations in which children were not segregated from adults in correctional centres. The UN Special Rapporteur on torture reported in his preliminary findings from his mission to Jamaica from 12 to 21 February 2010 that children continue to be held together with adults in lock-ups in police stations and in some correctional centres.

On 22 May 2009, seven inmate girls died in a fire in the Armadale Juvenile Correctional Centre at Alexandria (St. Anne). The report of the Armadale Commission of Inquiry, tabled in Parliament on 2 March 2010, found that the fire had broken out when police threw a teargas canister into the locked dormitory, after the girls had attempted to escape. The report found negligence on the part of administrators in the Ministry of National Security, members of the Department of Correctional Services and police officers, as well as practices which were contrary to the UN Standard Minimum Rules for the Administration of Juvenile Justice. Such practices included detention in small overcrowded cells and extensive and prolonged application of “lockdown” as a collective punitive measure. During “lockdown” girls were not allowed to go outdoors, nor to the dining room for meals, nor to the bathroom at night. On the night of the fire the girls were in “lockdown” which had been imposed two weeks earlier.

### **Social exclusion and lack of protection from violence in inner-city communities**

Jamaican inner-cities suffer from high levels of degradation. Unemployment rates are high and access to basic services – water, electricity and security of housing tenure – is often poor. Some of these neighbourhoods have been neglected by the state for years, and many have effectively become the fiefdoms of gang leaders. Criminal gangs not only control communities through fear and violence, they also control access to the few services that are available. Many are “garrison communities” where the ruling gangs have for years flourished under the patronage of one or other of the political parties.

People living in poverty in socially excluded inner-city communities are more likely to be the victims of violent crime. According to a 2007 UNODC/World Bank report, poorer households are more at risk of violent crime and at greater risk of murder and injury.

Residents of inner-city communities are trapped between high levels of violent crime by criminal gangs and human rights abuses and ill-treatment by the police. They are also victims of discrimination and stigmatisation by police and other public officials who often consider them as somehow worthless and deserving of their fate. As a consequence they are often denied the protection that they deserve.

## **D. Recommendations for action by the State under review**

### **Amnesty International calls on Jamaica:**

#### *Human rights violations by police*

- To enact the Independent Commission of Investigations Act and to establish the Commission as a matter of priority, ensuring that adequate resources are allocated to enable this new body to effectively perform its investigative tasks;
- To develop and fund a training strategy to ensure that the investigators of the Independent Commission of Investigations have the necessary competence and skills;
- To ensure that the Independent Commission of Investigations has access to adequate and independent ballistic and forensic expertise;
- To establish without delays the office of the Special Coroner in charge of dealing with cases of fatal police shootings;
- To adopt and to implement without delay the Corruption Prevention Act establishing the office of the Special Prosecutor for Corruption;
- To fully and systematically implement the reform of the police and ensure that the police force is representative, responsive and accountable to all the community and ensures respect and protection of human rights;

- To ensure that all police officers and other members of the security forces are trained in and follow at all times the provisions of the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- To ratify and implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

#### *Administration of justice*

- To fully and systematically implement the reform of the justice system.

#### *Violence against women and girls*

- To widely disseminate the Sexual Offences Act in order to ensure awareness among the rights-holders and effective application of the law by all relevant authorities
- To consider amending the Sexual Offences Act in order to criminalise marital rape in all circumstances;
- To ensure satisfactory investigation and prosecution of cases of gender-based violence;
- To allocate more consistent resources to the Bureau of Women's Affairs to carry out awareness raising, education and prevention programmes;
- To ensure the immediate establishment of more shelters for women victims of physical and sexual violence;
- To ensure that all relevant government departments collect and publish disaggregated data and statistics on violence against women and girls;
- To ratify and implement the Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW).

#### *The death penalty*

- To repeal all provisions allowing for the death penalty and to immediately declare a moratorium on all executions;
- To commute all death sentences to terms of imprisonment;
- Pending abolition of the death penalty, to ensure rigorous application of international standards for fair trial in all death penalty cases.

#### *Human rights of lesbian, gay, bisexual and transgender persons*

- To repeal all provisions allowing for the criminalization of same sex relations;
- To fully and thoroughly investigate all incidents and acts of violence suspected of being motivated by homophobic reasons;
- To take effective measures to reduce the climate of homophobia in Jamaica and to put an end to mob violence against lesbian, gay, bisexual and transgender persons.

#### *Children in custody*

- To fully implement the recommendations of the Armadale Commission of Inquiry;
- To immediately move all children detained in lock-ups in police stations to appropriate places of safety and authorized juvenile detention facilities.



*Social exclusion and lack of protection from violence in inner-city communities*

- To adopt and implement a plan to combat the root causes of violence, in particular disparities and discrimination in the access to economic, social and cultural rights;
- To coordinate social interventions effectively in order to ensure that available resources are deployed in ways that maximize impact;
- To adopt and implement strategies to combat stigmatization and discrimination against inner-city communities, especially in public security policies, state institutions and policing.

*Charter of Rights*

- To ensure that the new Charter of Fundamental Rights and Freedoms is the subject of wider and more effective consultation with civil society.

**Appendix: Amnesty International documents for further reference<sup>2</sup>**

- Jamaica: Report: “Public security reforms and human rights in Jamaica”, AI Index: AMR 38/001/2009, 21 July 2009.
- Jamaica: Report: “Let them kill each other” – Public security in Jamaica’s inner-cities”, AI Index: AMR 38/001/2008, 1 April 2008.
- Jamaica: Press Release: “More executions will not reduce crime”, AI Index: PRE01/302/2008, 28 November 2008.
- Jamaica: Public Statement: Amnesty International condemns homophobic violence, AI Index : AMR 38/004/2007, 16 April 2007.
- Jamaica: Open letter to the Prime Minister of Jamaica, Mrs Portia Simpson Miller, welcoming improvements to stop violence against women and encouraging new steps forward, AI Index: AMR 38/002/2007, 1 March 2007.
- Jamaica: Report: Opportunity to include the highest standards of international criminal law into national legislation to stop violence against women, AI Index: AMR 38/001/2007, 1 March 2007.
- Jamaica: Report: Sexual violence against women and girls in Jamaica - "Just a little sex", AI Index: AMR 38/002/2006, 21 June 2006.
- Jamaica: Press Release: First police officer in over six years convicted of murder while on duty, AI Index: AMR 38/001/2006, 23 February 2006.

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<sup>2</sup> This document is available on Amnesty International’s website: <http://www.amnesty.org/en/region/jamaica>