



JAMAICA

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 21ST SESSION OF THE UPR WORKING GROUP, APRIL-MAY 2015

FOLLOW UP TO THE PREVIOUS REVIEW

During its first Universal Periodic Review (UPR) in November 2010, Jamaica accepted recommendations related to the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC)¹ and the the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD)². Amnesty International welcomes that Jamaica ratified the the CRC-OP-SC on 26 August 2011. However, Jamaica has yet to ratify the OP-CRPD.

With regard to recommendations to sign and ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol,³ Jamaica stated at the last UPR that it was reviewing the Convention with a view to taking a decision on ratification.⁴ Similarly, regarding recommendations related to ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,⁵ Jamaica stated that its ratification was being considered as part “of the broader consideration of the review of its international human rights obligations”.⁶ Four years later, however, neither of these important human rights standards have been ratified.

Amnesty International would take issue with Jamaica’s assertion at the last UPR that “being a non-party to international human rights treaties does not diminish the importance of the country’s commitment to promoting and protecting human rights”.⁷ Ratification of international human rights treaties, their incorporation into national law and implementation is crucial for the protection and promotion of the human rights of every country’s citizens. Amnesty International regards ratification of these treaties as an important indication of a government’s commitment to the concept of human rights as a concern that transcends national boundaries. Adherence to these treaties not only invigorates domestic efforts for implementation but also preserves important achievements of today against retrogression tomorrow.

THE HUMAN RIGHTS SITUATION ON THE GROUND

The death penalty

Amnesty International welcomes the fact that Jamaica has not used the death penalty in more than a quarter of a century, the last execution taking place in February 1988. The organization also welcomes that no new death sentences are known to have been imposed since 2010. However, it is concerned that despite the acknowledged “de facto moratorium” on the use of the death penalty,⁸ the government is not considering establishing a formal moratorium. Amnesty International is also disappointed to note that since its last UPR, Jamaica has continued to vote against the UN General Assembly resolutions on a moratorium on the use of the death penalty, in December 2010 and December 2012, respectively.⁹

The adoption in April 2011 of the Charter of Fundamental Rights and Freedoms includes a provision seemingly intended to reverse the effects of the 1994 Privy Council decision which established that execution after a delay of more than five

years would constitute 'inhuman or degrading punishment or other treatment'. Section 13(8) of the Constitution (the Charter of Rights was enacted as sections 13 to 20 of the Constitution) states that the execution of a sentence of death should not be held inconsistent with or in contravention of the section of the Constitution recognizing fundamental rights and freedoms, including in relation to delays in the execution of the sentence and to the physical conditions or arrangements under which a prisoner is detained. International human rights standards and national and regional jurisprudence have repeatedly recognized these factors as possibly amounting to cruel, inhuman or degrading punishment, while recognizing the right of a prisoner under sentence of death to make the maximum use of the judicial processes available.

Amnesty International opposes the death penalty in all circumstances as a violation of the right to life and an ultimately cruel, inhuman and degrading punishment.

Violence against women and girls

Amnesty International remains concerned about the high levels of physical and sexual violence against women and girls in Jamaica. Police statistics from the 2013 Economic and Social Survey published in April 2014 by the Planning Institute of Jamaica showed that 814 cases of rape were recorded in 2013, and that 128 women were murdered in the same year.¹⁰ The clear-up rate for rape cases remains poor, with only 254 of the 465 rapes cases being solved in the first eight months of 2014.¹¹

Women and girls living in inner-city communities remain 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.

Following a Senate motion in October 2013 calling for greater legislative protection for women and girls, a joint select committee of Parliament was established in July 2014 to review the Sexual Offences Act, Offences against the Person Act, Domestic Violence Act, and the Child Care and Protection Act, with the objective of improving protection for women, children, persons living with disabilities, and the elderly from violence and abuse. The Sexual Offences Act, which was made law in 2011, criminalizes marital rape, but is very limited in its application.

Reproductive rights

Under Section 72 of the Offences Against the Person Act, a woman found guilty of terminating a pregnancy faces life imprisonment, while Section 73 provides prison sentences of up to three years for anyone found guilty of assisting in facilitating an abortion. Abortions may be permitted, however, to save the life of the mother.

In July 2012, the UN Committee on the Elimination of All Forms of Discrimination against Women highlighted the lack of data in Jamaica on the incidence of unsafe abortion and its linkages to high infant and maternal mortality rates.¹²

Children's rights

On 31 July 2013, the Inter-American Commission on Human Rights granted precautionary measures to protect the life and physical integrity of girls held in adult correctional centres in Jamaica. The Commission requested that all girls be transferred to appropriate facilities and to prevent any children from being detained in adult detention centres in the future. By the end of 2013, all girls had been removed to South Camp Juvenile Correctional and Remand Centre. However, during a February 2014 visit, a local human rights organization found the new site to be "unsuitable for the long-term housing of children".¹³

At time of writing it is believed that a number of boys are being held at Horizon Adult Remand Centre. Children also continue to be kept in police lock-ups alongside adults, in some cases for several days, in contravention of the Child Care and Protection Act and international human rights law.

Human rights violations by the police

Following rising numbers in police killings in recent years (210 in 2011, 219 in 2012 and 258 in 2013), 2014 has seen a reduction in the number of police killings according to the Independent Commission of Investigations (INDECOM), the independent police oversight agency. By 11 September 2014, 94 people had been killed,¹⁴ compared with 171 for the corresponding period in 2013. These are still significant figures, however, and a number of people have been killed in circumstances suggesting that they may have been extrajudicially executed. Eleven police officers from Clarendon suspected of being part of a “death squad” were arrested and charged in April 2014 by INDECOM. They were alleged to have been involved in the murder of nine civilians since 2009. Investigations are ongoing at time of writing.

Since the last UPR, there has yet to be justice for victims of alleged human rights abuses which occurred during the state of emergency in May 2010. A Commission of Enquiry was finally established in February 2014 to investigate alleged human rights violations during the 2010 state of emergency, when 76 civilians were killed, 44 of whom are alleged to have been extrajudicially executed by the security forces. Amnesty International has concerns, however, regarding the lack of specificity in the Commission’s terms of reference. At time of writing, the three-person Commission has yet to commence its work.

The creation of INDECOM has been an important positive development since the first UPR cycle. It began operating in August 2010 to investigate human right abuses by members of the security forces.

INDECOM has, however, faced a number of obstacles in carrying out its functions, including lack of cooperation and even hostility from members of the police force. Shortly after its creation, a number of police groups sought to have Section 20 of the INDECOM Act – which states that INDECOM has the powers to arrest and charge police officers – declared unconstitutional. A Supreme Court ruling from July 2013 found that INDECOM did have the power to arrest, charge and prosecute members of the police.

INDECOM has also faced obstacles in carrying out important ballistics testing. Under Jamaican law, only the Commissioner of Police can qualify an analyst as a ballistics expert and permission to certify INDECOM’s experts as such has so far been denied.¹⁵ INDECOM has reported a major schism between police and civilian accounts of police killings. In a 2012 report INDECOM stated that in less than 5% of the 310 fatalities which at that time were being investigated did civilian and police accounts accord, and that no officer had admitted that their actions were unjustified.¹⁶

Deaths in police custody remain a concern. Mario Dean died on 6 August 2014 from an alleged beating while in custody at Barnett Street Police Station in Montego Bay, St James. He had been arrested allegedly on a drugs related offence. Police officers stated that he was beaten by inmates, but INDECOM has launched an investigation. A few weeks after his death, the Ministers of Justice and National Security announced the formation of three working groups to review Jamaica’s detention system and to “develop a strategic response to the issue of the treatment of persons in lock-ups and correctional facilities”.

Discrimination against lesbian, gay, bisexual, transgender and intersex persons

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.

Jamaica adopted a new Charter of Fundamental Rights and Freedoms in April 2011, but the expanded grounds for non-discrimination did not include sexual orientation and gender identity.

By continuing to criminalize consensual same-sex conduct Jamaica is in violation of its international obligations under the treaties to which it is a party. Laws criminalizing consensual sex between adults of the same sex breach the right to privacy, as set out in Article 17 of the International Covenant on Civil and Political Rights, to which Jamaica is a state party.¹⁷

During the electoral campaign in December 2011, the current Prime Minister stated that no one should be discriminated against because of their sexual orientation. In 2013 her government announced that a “conscience vote” by MPs on

legislation criminalizing consensual same sex relations would be held before April 2014. The vote, however, never took place and on 3 April 2014 the Prime Minister said that there would need to be consultations with constituents before the law could be reviewed.

LGBTI organizations continue to report attacks, harassment and threats against individuals based on their real or perceived sexual orientation, which are not fully and promptly investigated. Dwayne Jones, a 17-year-old cross-dresser, was killed by a mob on 22 July 2013 in St. James after somebody pointed out that he was cross-dressing. At time of writing no one has been arrested or charged with his murder.

Lawyer and activist Maurice Tomlinson was forced to leave Jamaica following repeated death threats related to his work defending LGBTI rights. In February 2011, he was threatened with death after he publicly denounced a violent police raid on a gay bar in Montego Bay. In January 2012, news of his marriage to another man (in another country) was published in the press, leading to an escalation in the death threats. No one has ever been brought to justice for the threats against him.

In August 2014, Javed Jaghai, a member of the Jamaica Forum of Lesbians, All-Sexuals and Gays, discontinued the constitutional challenge he had filed in February 2013 against Sections 76-82 of the Offences against the Person Act, following threats against him and his family. He had argued that these laws violated his and others' constitutional rights.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Jamaica:

Violence against women and girls:

- To amend the Sexual Offences Act in order to criminalize marital rape in all circumstances;
- To ensure comprehensive data collection on all forms of violence against women and girls in order to support the effective implementation of laws, policies and programmes to eliminate violence against women and girls;
- To ensure the National Strategic Action Plan to Eliminate Gender-Based Violence is finalized and implemented;
- 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 ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Reproductive rights

- To ensure that safe and legal abortion services are available as an option for women and girls who are pregnant as a result of rape or whose lives or health are put at risk should they continue with the pregnancy.

Discrimination against lesbian, gay, bisexual and transgender persons

- To repeal all provisions that discriminate against persons on grounds of their sexual orientation, including Sections 76-82 of the Offences against the Person Act;
- Amend the Charter of Fundamental Rights and Freedoms in order to prohibit discrimination on the basis of sexual orientation and gender identity;
- To fully and thoroughly investigate all incidents and acts of violence suspected of being motivated by homophobia or transphobia, and bring to justice those responsible;

- To take effective measures to reduce the climate of homophobia in Jamaica and to put an end to mob violence against lesbian, gay, bisexual, transgender and intersex persons.

Excessive use of force by the security forces

- To ensure that INDECOM has the necessary resources to effectively carry out its mandate, including the necessary resources for timely ballistics and forensic testing;
- To ensure that INDECOM's powers to arrest, charge and prosecute are maintained, as established in the 2010 INDECOM Act;
- To ensure that the office of the Special Coroner in charge of dealing with cases of fatal police shootings has the necessary resources to allow it to carry out its functions;
- To ensure that members of the Jamaica Constabulary Force 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.

The death penalty

- To establish an official moratorium on executions with a view to abolishing the death penalty, as provided by four UN General Assembly resolutions adopted since December 2007, including most recently resolution 67/176 of 20 December 2012;
- To commute without delay all death sentences to terms of imprisonment;
- Pending full abolition of the death penalty, to ensure rigorous compliance in all death penalty cases with international standards for fair trial;
- To ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

Children's rights

- To ensure that children are not kept in police lock-ups alongside adults nor detained in adult correctional facilities and that detention of children is used only as a measure of last resort and for the shortest appropriate period of time, as established in the Convention on the Rights of the Child.

International human rights standards:

- To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; re-accede to the Optional Protocol to the International Covenant on Civil and Political Rights; ratify the Convention on the Rights of Persons with Disabilities and its the Optional Protocol; and the International Convention for the Protection of All Persons from Enforced Disappearance.

END NOTES

¹ Report of the Working Group on the Universal Periodic Review A/HRC/16/14, 4 January 2011, paragraph 98.1 (Morocco, Mexico, Spain, Republic of Moldova, Haiti)

² *Ibid*, paragraph 98.2 (Panama, Spain, Argentina)

³ *Ibid*, paragraphs 100.2 (Portugal), (United States), (Sweden), (Republic of Moldova), (Slovakia), (Costa Rica), (Spain), (Argentina), (Ecuador), (Maldives); 100.3 (Brazil)

⁴ Report of the Working Group on the Universal Periodic Review, Addendum, A/HRC/16/14/Add.1, paragraph (b)

⁵ A/HRC/16/14, paragraph 100.4 (Panama, Spain, Argentina, Morocco, Turkey, Trinidad and Tobago, Ecuador)

⁶ A/HRC/16/14/Add.1, paragraph (d)

⁷ Draft report of the Human Rights Council on its sixteenth session, A/HRC/16/L.41, 6 April 2011, paragraph 640

⁸ *Ibid*, paragraph 37

⁹ UN General Assembly resolutions 65/206 (21 December 2010) and 67/176 (20 December 2012)

¹⁰ Economic and Social Survey Jamaica 2013, April 2014, www.pioj.gov.jm

¹¹ *700 murders, but stats on the decline*, Jamaica Gleaner, 16 September 2014, <http://jamaica-gleaner.com/gleaner/20140916/lead/lead32.html>

¹² Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/JAM/CO/6-7, 27 July 2012, paragraph 29

¹³ Jamaicans for Justice, *IAHCR Report on the situation of human rights in Jamaica*, March 2014, paragraph 129,

¹⁴ *INDECOM starts probe of Garveymeade fatal shooting*, Jamaica Gleaner, 11 September 2014, http://www.jamaicaobserver.com/mobile/news/INDECOM-starts-probe-of-Garveymeade-fatal-shooting_17527277

¹⁵ *INDECOM Bats For Its Own Ballistics Expert*, Jamaica Gleaner, 5 October 2013, <http://jamaica-gleaner.com/gleaner/20131005/lead/lead8.html>

¹⁶ INDECOM, *Quarterly Report to Parliament*, 2012, page 10, <http://www.indecom.gov.jm/Release/Report%20to%20Parliament.pdf>

¹⁷ UN Human Rights Committee, 1994, *Toonen v Australia*.