



JAMAICA: A LONG ROAD TO JUSTICE?

HUMAN RIGHTS VIOLATIONS
UNDER THE STATE OF EMERGENCY

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Cover photo: Members of the Jamaica Defence Force stand guard following the May 2010 incursion by the security forces into Tivoli Gardens. © The Gleaner Company Ltd

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ABBREVIATIONS

Bureau of Special Investigations (BSI)

Independent Commission of Investigations (INDECOM)

Jamaica Constabulary Force (JCF)

Jamaica Defence Force (JDF)

Jamaica Labour Party (JLP)

Office of the Public Defender (OPD)

Police Public Complaints Authority (PPCA)

United Nations (UN)

Universal Periodic Review (UPR)

1. INTRODUCTION

On 23 May 2010, the Governor-General of Jamaica declared a State of Public Emergency in the parishes of Kingston and St Andrew. Within two days, at least 74 people, including one member of the security forces, had been killed in Tivoli Gardens in West Kingston, scene of much of the violence. At least 54 others, more than half of them members of the security forces, were injured during police operations.

More than 40 of those killed in Tivoli Gardens are alleged to have been the victims of extrajudicial execution by the security forces.¹ Unlawful killings were also reported in other operations conducted during the state of emergency. More than 4,000 people were detained under emergency powers, without charge or trial or access to an effective means of challenging the lawfulness of their detention before a court. Two people reportedly taken into custody remain unaccounted for and may have been victims of enforced disappearance.

The events in West Kingston occurred in the context of high levels of crime and violence, particularly in communities with a long history of state neglect. Those living in marginalized inner-city communities face exclusion on many levels, including access to jobs, basic services and adequate housing. Largely abandoned by the state, these communities have been left at the mercy of criminal gangs who have taken over many of the functions that should be fulfilled by the state.

The May 2010 violence has been described as “the worst in Jamaican post-independence history”.² Some have compared it to the killing of 500 slaves by colonial officials during the 1831 slave revolt led by Sam Sharpe. According to the Jamaican Public Defender (an independent officer of Parliament similar to an ombudsman) the primary difference between the two events is that the Tivoli Gardens killings “took place in the context of a 21st-century Jamaican state which claims to be governed by conventions of human rights to which it is signatory”.³

Despite the scale of the loss of life and compelling testimonies of grave human rights violations – including possible extrajudicial executions, enforced disappearances and arbitrary arrests – investigations into the violence have yet to establish the facts and the responsibilities conclusively. Independent organizations and institutions in Jamaica continue to call for a full public inquiry into the security forces operation. One year on, the demand for justice by many survivors and victims’ families has yet to be answered.

THE MAY-JULY 2010 EVENTS

The decision to declare a one-month state of emergency on 23 May 2010 was taken at the request of the Cabinet following an increase in violence in West Kingston.⁴ The conflict centred on attempts by armed supporters of Christopher “Dudus” Coke to resist efforts to take him into custody. The US authorities were seeking Christopher Coke’s extradition to the USA where he faced drug-trafficking and firearms charges.⁵

On 23 May, several police stations were attacked by gunmen; two were burned down. The police reported that officers removing barricades erected on major roads in West Kingston were fired on. Two police officers were killed in the community of Mountain View during the night. There were reports that heavily armed men were manning roadblocks into the Tivoli Gardens community and positioned on the top of buildings in the area.

On 24 May, the police and the military initiated a joint operation in the West Kingston community of Tivoli Gardens. The stated purpose of the operation was to arrest Christopher Coke and re-establish order in the community. During the first two days of the operation, at least 74 people, including a member of the Jamaica Defence Force (JDF), were killed and at least 54 people, including 28 members of the security forces, were injured.

On 27 May, the media were finally allowed to enter Tivoli Gardens, but only under military escort. Journalists' ability to gather information during this strictly controlled guided tour was very limited.⁶

On 22 June, Christopher Coke was arrested.⁷ On the same day, Parliament voted to extend the state of emergency for a further month and to include the parish of St Catherine. In calling for the one-month extension, the Prime Minister claimed that the security force operation in West Kingston had brought that community "substantially under control" and that the country's murder rate had declined by 35 per cent compared to the same period the previous year.⁸ The justification offered for extending the state of emergency to St Catherine was a spike in the number of murders in the parish and the presence of powerful criminal gangs.⁹

On 22 July, the state of emergency ended after a government request for a further one-month extension was rejected by Parliament.

THE OFFICIAL RESPONSE

Despite the high number of fatalities and injuries resulting from the operation in Tivoli Gardens, the Commissioner of Police praised the professionalism of the security forces,¹⁰ while the Minister of National Security declared that the approach used in Tivoli Gardens would be used as a template to "go into all communities where criminality and criminal empires exist".¹¹

Jamaica has an obligation under international law to conduct independent, impartial, effective and prompt investigations into each allegation of human rights violations. During the adoption of the outcome of the Universal Periodic Review (UPR) at the UN Human Rights Council in March 2011,¹² the Government said it supports a recommendation to "carry out appropriate, independent, effective and transparent investigations into the deaths that occurred between 24 and 28 May 2010 in West Kingston during police operations, make public the outcomes of such investigations, and bring to justice the perpetrators of human rights violations."¹³

Investigations have not yet provided conclusive answers about what happened during the state of emergency or lead to any criminal proceedings. The number and gravity of the alleged violations, as well as indications that they may have occurred on a systematic basis rather than as a series of isolated incidents, only adds weight to the calls by independent Jamaican organizations and institutions for a full public inquiry into the operations.

This report details some of the allegations of human rights violations committed during the state of emergency and describes ongoing investigations into those allegations. It includes a series of recommendations aimed at ensuring that independent investigations into all the allegations and issues are satisfactorily completed; that anyone found responsible for human rights violations is held accountable (including, where the violations constituted crimes, by being brought to justice); and that victims receive effective redress and reparation. The report ends with a further set of recommendations aimed at enhancing the Jamaican investigative system and preventing unlawful killings in the future.

2. BACKGROUND

“Only rich people survive, ghetto people don’t”

Father of a man killed by the security forces in Tivoli Gardens during the state of emergency

The outbreak of violence in May 2010 in West Kingston occurred in the context of “garrison” communities and a “don” culture in which entire communities are controlled by organized criminal gangs through a system based on violence, intimidation, patronage and economic interests. Residents of inner-city communities are at constant risk of violence, caught between the criminal gangs who control their neighbourhoods and violent policing methods.¹⁴ During the state of emergency, those living in the Tivoli Gardens community were once again trapped between violent criminal gangs and a highly militarized security operation.

THE PUBLIC SECURITY CONTEXT

Crime and violence are widespread in Jamaica, especially in deprived and excluded inner-city communities where unemployment rates are high and access to basic services, such as water, electricity and security of housing tenure, are often poor. Years of state neglect have allowed some of these communities to become the fiefdom of gang leaders. Known as “dons”, gang leaders “collect taxes” from local businesses (through extortion); allocate jobs (both in the legal sector and in criminal activities); distribute food, school books and “scholarships”; and mete out punishment to those who transgress gang rules.

Gang control is at its most pervasive in “garrison” communities.¹⁵ These are communities entirely under the control of one or other of the political parties. Party control is sometimes enforced by heavily armed gangs who coerce people in the community into voting for the party in control. This situation has persisted under consecutive governments.¹⁶

Policing of inner-city communities has been largely conditioned by a view that criminalizes entire communities. This prejudiced perception has given rise in a number of instances to a tolerance of excessive use of force by the security forces. However, far from increasing protection from violent crime, such policing methods have exacerbated the public security problem.

A large number of people are killed by the police every year. Some members of the Jamaica Constabulary Force (JCF) resort to unlawful killings to restrain individuals they believe pose a threat to the community. In many instances officers also commit unlawful killings for no apparent reason, as a result of negligence, or in the context of the conflict between political factions.

Although the available evidence indicates that many fatal shootings by police are probably the result of excessive use of force and some may have amounted to extrajudicial executions, flawed investigations, corruption and a failing justice system have provided impunity for the officers responsible. Between 2000 and 2010, more than 2,220 fatal shootings by police have been reported, yet only two police officers have been convicted for their involvement in killings.

PUBLIC SECURITY REFORMS

The Jamaican government has acknowledged that public security is a serious problem and has taken initiatives to address most of the causes. Several reform projects have been developed and a number are being implemented.

The JCF is going through a process of reform that officially started on 1 September 2008.¹⁷ Major progress has been made in terms of anti-corruption measures,¹⁸ including by more rigorous vetting of new and existing personnel;¹⁹ the processing of disciplinary cases;²⁰ and human rights training.²¹ However, despite these positive steps, the number of killings by the police has been on the rise. According to police statistics, 263 people were fatally shot by police officers in 2009 and 320 in 2010. The 2010 figure does not include the 73 people killed in West Kingston between 24 and 25 May 2010.

A process of reform of the justice system started in June 2007 with the publication of a detailed set of recommendations.²² However, according to information received by Amnesty International, implementation of the reform process has suffered from a lack of resources and political leadership, with the result that progress has been very slow.

The Independent Commission of Investigations (INDECOM) was established in August 2010. It is mandated to carry out investigations into reports of abuses by members of the security forces; to refer cases for criminal prosecution where the evidence warrants; and to carry out studies and make recommendations of a thematic or broader policy nature. INDECOM has replaced the Police Public Complaints Authority²³ and will gradually take over the role of the Bureau of Special Investigations (BSI, a unit within the JCF that investigates fatal shootings by police). Jamaican human rights organizations believe that INDECOM has made a positive start and demonstrated a commitment to ensure its investigations are carried out in an independent manner. It is also encouraging that the budget allocated to INDECOM for 2011/2012 should allow the recruitment of 30 additional investigators.²⁴ It is crucial that the INDECOM receives sufficient resources, powers and co-operation from other state agencies to conduct effective investigations that actually lead to criminal and other proceedings where there is sufficient evidence. At the time of writing, it was too early to assess the real impact that INDECOM will have in enhancing the accountability of the security forces.

In February 2011 a Special Coroner with jurisdiction over deaths caused by agents of the state was appointed, two years after the office was created under the Coroners (Amendment) Act. The government has stated that the aim of the Special Coroner's Office is to ensure that the cases that fall within its remit are dealt with more promptly, and to increase transparency and the accountability of the state and its agents.²⁵ It is crucial that the Special Coroner be given adequate resources if these aims are to be realized.

Since December 2008, the government has been developing a National Crime Prevention and Community Safety Strategy which is expected to be adopted by the Cabinet in June 2011.²⁶ The Strategy represents an acknowledgement by the government that crime and violence requires a strategic and co-ordinated response that goes beyond traditional law enforcement methods. The Strategy incorporates a multi-sectoral approach to crime prevention and community safety²⁷ based on, but not limited to, social development; effective policing and justice processes; and reducing reoffending. In addition, following the events in West Kingston in May 2010, the Prime Minister mandated the Planning Institute of Jamaica to elaborate a Community Renewal Programme for the “long term stability, well-being and inclusiveness of violent and vulnerable communities”.²⁸ Although the stated aims of both initiatives are commendable, uncertainty remains about the relationship between the two strategies and there is concern that they could end up competing for limited funding.

The various reform projects mentioned above reveal a commitment on the part of the government to tackle several causes of the public security crisis. However, the outbreak of violence that led to the state of emergency in West Kingston in May 2010, and the number and the gravity of human rights violations alleged to have resulted from the law enforcement operation that followed reveal that much remains to be done in order for the planned reforms to translate into enhanced security for the residents of all neighbourhoods in Jamaica.

PREVIOUS CONFRONTATIONS IN WEST KINGSTON

Tivoli Gardens had been described as “a barricaded neighbourhood guarded by armed gunmen”²⁹ and the “**mother of all garrisons**”.³⁰ It is the local constituency of the current Prime Minister and residents are predominantly supporters of the Jamaica Labour Party (JLP), in office since 2007.

Christopher Coke was the “don” of Tivoli Gardens, frequently referred to by local residents simply as “the President”. Reputed to be a gang leader and a businessman, Christopher Coke enjoyed the support of many residents of Tivoli Gardens and surrounding areas, some of whom saw him as a benefactor. “[He] is a good man. Him do good for the community. Take care of the children, help them to go [to] school [and] take care of old people”, one resident told media reporters.³¹

Since the events of May 2010, national authorities have acknowledged that the state had previously been absent from Tivoli Gardens. A concept note issued by the Ministry of National Security in May 2010 stated: “The May events hardened effects of an unbalanced engagement of residents of the area by the State, civil society and the private sector over a sustained period in all spheres of development. These communities manifest the symptoms associated with high levels of dysfunction and brokenness: degraded physical infrastructure including poor housing stock; poverty and generational unemployment; social exclusion and geographic discrimination; the presence of criminal facilitators such as guns and drugs; and, dysfunctional social relations and conflict.”³² The government claims that its security operations have provided an opportunity to redress this gap and has stated its commitment to create a lasting state presence in Tivoli Gardens (and neighbouring communities) in the form of social welfare and community services, public order, and justice. However, observers in Jamaica told Amnesty International that few of these measures have actually been put in place and that the window of opportunity for the state to re-engage fully with the affected communities is rapidly closing.

May 2010 was the latest in a series of “confrontations” between the security forces and gangs in Tivoli Gardens. Between 7 and 10 July 2001 there were large scale disturbances throughout Jamaica, most significantly in the West Kingston area. Between 5 and 10 July 2001, the JCF and the JDF carried out a joint operation in Tivoli Gardens for the stated purpose of seizing illegal weapons. The security forces reportedly came under attack from armed men. At least 27 people were killed and more than 60 were reported seriously injured as a consequence of the “confrontation”. Two of the dead were members of the security forces. For some three days many of those living in West Kingston were not able to leave their homes and the bodies of the dead were left in the streets as the constant gunfire meant people could not retrieve them.

Between 6 and 7 May 1997, there were reports of armed clashes between residents of Tivoli Gardens and members of the security forces. These followed the fatal shooting of Rohan Fraser by the security forces in disputed circumstances on 24 April 1997. Three women and a child were killed in the “confrontation”. There were reports that the security forces engaged in indiscriminate shootings over the two days.

No one has been held accountable for the killings in 1997 or 2001. The authorities failed to initiate any investigation into the 1997 killings. A commission of inquiry was appointed to look into the 2001 events, but it did not reach any proper evidence-based conclusion as to whether there was any state responsibility for the deaths. The commission was fatally flawed from the outset. Legal, factual and evidential inadequacies combined to produce a commission that was institutionally biased in favour of the state. The commission’s report did not adequately address the planning of the operation nor did it take into account international standards on the use of lethal force by law enforcement officials. The collection, analysis and consideration of medical, forensic and ballistic evidence also failed to meet international standards. As a consequence, the inquiry failed to fulfil Jamaica’s obligations to ensure the investigations into alleged human rights violations required by international law.³³

3. ALLEGED HUMAN RIGHTS VIOLATIONS DURING THE STATE OF EMERGENCY

“They never had to kill him in that way. They could have taken him, checked him out and freed him... I would feel 100 per cent better if my son was in jail... It was a cruel act the way in which they took out my son and killed him”

Mother of Sheldon Gary Davis, killed by the security forces during the state of emergency

Many abuses by the security forces were reported during the state of emergency to the Office of the Public Defender (OPD),³⁴ Jamaican human rights organizations and the national and international media. In January 2011, the Public Defender stated that his office had received more than 1,000 complaints related to the operation in Tivoli Gardens, including allegations of extrajudicial executions, malicious destruction of property, looting, arbitrary detention and assault.³⁵ This chapter highlights allegations of human rights violations during the state of emergency reported to Amnesty International.

UNLAWFUL KILLINGS

On 27 May, the police announced that: “the bodies of some 73 civilians have been recovered from the West Kingston community of Tivoli Gardens following the recent battle between members of the nation’s security forces and gunmen”.³⁶ It was also reported that one soldier in the JDF and two members of the JCF had been killed; the two police officers had been killed in Mountain View during the night of 23 May, before the beginning of the operation in Tivoli Gardens.

The security forces have suggested that some of the bodies recovered might have come from areas close to but not inside the area of the operation and could have been the victims of ordinary crimes. They also stated that: “it is not clear as to whether all these individuals were killed by gunfire from the security forces because criminal elements have been firing shots at all security forces positions and patrols since Sunday”.³⁷ As a consequence, pending the result of the investigation, the 73 deaths are not counted in the official annual statistics of killings by the security forces; they are instead categorized as “unexplained homicides”.

Community residents, on the other hand, have said the official figure of 73 may be lower than the actual number of deaths for which state forces were responsible.

The OPD received dozens of complaints of extrajudicial executions relating to the 73 killings officially recognized by the police. Human rights organizations and journalists received reports of people being killed while in police custody, of unarmed men being executed at point-blank range, and of young men being shot dead in their homes. There were a number of reports that people were killed solely because they were suspected of being one of the gunmen who supported Christopher Coke.

Only independent and thorough investigations can confirm or refute each of these allegations. However, a number of those working on public security issues in Jamaica have pointed out that there are good grounds for believing that at least some of the allegations are well-founded.

Jamaican organizations point to the fact that, even before the state of emergency, Jamaica had a high overall rate of fatal shootings by law enforcement officials and that the circumstances surrounding many of these shootings suggested that they may have been unlawful. Given this background, it has been argued that the likelihood is that unlawful killings would also occur during the large scale and intense policing operations conducted during the state of emergency.

Another frequently cited indicator is the disparity between the number of firearms reported to have been recovered after the first two days of the operation in Tivoli Gardens, and the number of people who were killed by the security forces over the same period. As the Public Defender first noted on 26 May,³⁸ the police initially said that 73 bodies had been found while only six firearms were recovered from the scene.

Under the international standards applicable to such situations, the intentional use of lethal force is lawful only when strictly necessary to protect life.³⁹ The Public Defender, therefore, questioned how the alarming disparity between fatalities and firearms recovered could be consistent with the lawful use of lethal force. The Commissioner of Police and the Chief of the JDF replied that the disparity was “not unusual”. The Police Commissioner stated that the security forces first carried out a primary search “which was to clear the environment and to detain people” and then secondary searches “which are a bit more detailed, for weapons and evidence”. He also said that many of the gunmen who were shooting at members of the security forces were hit from “distances of over 300 yards... if a man is firing a rifle and he is taken out by snipers there is no way that the sniper can go and retrieve his firearm”.⁴⁰ Over the following days, although no more fatalities were registered in Tivoli Gardens, the number of illegal weapons recovered in the area increased gradually and on 22 June, the Prime Minister announced in Parliament that 87 firearms had been recovered.⁴¹

Allegations of unlawful killings were not limited to the law enforcement operations in Tivoli Gardens between 24 and 25 May 2011. The OPD and Jamaican human rights organizations also received reports from other communities covered by the state of emergency.

Ian Gordon, Geovani Nunes and Jamie Fisher were killed in Mountain View, St Andrew Parish, on 26 May 2010. Local residents alleged that the three men were killed “in cold-

blood".⁴² Police operations in the community began on 24 May in response to the killing of two police officers in the area on the night of 23 May. The police claimed that when they went to the area in search of wanted men, gunmen engaged in a shoot-out with them. A woman who was with Ian Gordon when he was apprehended by the police told Amnesty International what happened.

"Ian didn't live in Mountain View. He had just gone there that day to visit his two daughters. He was going to a nearby shop to buy a juice for them, when several police officers wearing blue uniforms and helmets and carrying long guns stopped him. They searched and handcuffed him. They found nothing.

They took him further down the lane to a shop. I tried to reach him several times, but all the times the police shoved me away. I was later told by eyewitnesses that the police shot him in the foot in the shop. They left him on the floor and went next door where they killed two others.

They went back to Ian. He showed them his ID and explained that he was not from the area. The officers discussed among themselves on what to do and one was heard saying 'Kill him'. Another officer then shot him in the head.

I still can't believe it happened. He didn't do anything wrong. Was it wrong to go and see his children?... I don't know why they killed him. Somebody says that the police was looking for a man with dreadlocks who lived next door. Ian had dreadlocks too, so they might have killed him by mistake...

I don't know if there is anything that could happen that would make me feel satisfied... I just want them to know that if something happens, you don't just get mad and take it out the first person you see, and if you are going to look for someone, make sure it is the right person... I want to ask them if it was because of the state of emergency that gives them the right not to look at people's identities. If someone is showing their ID, they should take it and do a check on the person first, not kill them."

The investigation into the death of Ian Gordon is being conducted by the BSI and supervised by INDECOM. At the time of writing, ballistic and forensic reports were still outstanding.

Sheldon Gary Davis, aged 29, was killed by the security forces on Sunday 30 May 2010 in Denham Town, West Kingston, after he had been taken into custody to be "checked out". His mother described her desperate search for her son after she witnessed his arrest and before she finally received confirmation four days later that he had been killed.⁴³

"It happened about a week after everything was finished in Tivoli. Sheldon and I were at home, when soldiers knocked our door. It was about 10 a.m. They said that they were just checking. They searched the house. When they saw Sheldon, they asked for his ID and questioned why he was walking with a limp. They said: 'That limp may be from a gunshot wound', but I explained them that he was unable to bend his foot since the age of six after a sickness and that he had been operated several times. They took him out. They said they wanted to check him out.

From the window I saw that the police forced him in a jeep. There were four police officers in that jeep, but they were not the same who had searched the house. Less than an hour after I heard some gunshots on the opposite side of the building.

In the afternoon, as Sheldon had still not come back, I started looking for him. I went to seven different police stations but nobody had seen him. On Monday, I went again. I took a photo of him with me, showing it to people, trying to find him. Nothing. On Tuesday, the same. Every day I started searching for him since the morning, as soon as I got up. I was unable to eat. I just wanted to know where he was.

On Wednesday, in Kingston Mall, a policewoman checked in a book and told me that he was dead. I was shocked and started crying. She told me to go to the Blood Bank because it was there that he had been killed.

I went there on Thursday morning. A police officer took long time to respond to me. Finally he told me that they killed him there because he was trying to take a soldier's gun. When I went to identify the body at the morgue in Madden, I passed out. Then I went back to Denham Town police station. They gave me his passport back. I had been to that police station twice already and they never told me anything, although they had his passport!

A police officer who was sympathetic took me aside and told me that the way they had killed my son was a wicked act. Do you understand? The Blood Bank is just behind my building. The gunshots that I heard after Sheldon had been taken by the police were probably those which killed him!

In those days, the police was using the Blood Bank to hold people. When I went there, some young men told me that they witnessed Sheldon's killing. The police put him under a mango tree and shot at him. A police officer said in a rude tone 'Young man, aren't you dead yet?'. He shot him again. These witnesses are too afraid to give statements. The autopsy was done about a month after. It showed that he had been shot twice, once in the foot and once in the abdomen.

I buried him on 4 July, on the day of my birthday. For long time after his death, my memory was gone. I cried every Sunday after church. I still avoid passing by the Blood Bank. My younger daughter was unable to take her exams at school and had to go through counselling at school. Sheldon was helping me a lot. Now I am alone, in dire financial straits and I don't know how to pay for my daughter's school fees.

I would like to put the guilty behind bars and sue the government. If my son was alive, it wouldn't matter how old I got, he would take care of me. I pray God to help the Public Defender and Jamaicans for Justice fighting my son's cause, that I may be able to get justice. I prayed for the one who pulled the trigger so that he would confess and say that Sheldon was not threatening him. Why would a young man try to take away a gun when there were many soldiers around? And even if he had really tried to take the gun, you are in the army, you know how to defeat somebody who is trying to disarm you! You should be able to kick away his feet and hold the gun upright, fire a shot in the air and handcuff him. Instead the person to whom he was trying to take the gun from shot him twice! No one is an idiot!"

Sheldon Gary Davis' mother reported the killing to the Office of the Public Defender, who is carrying out an independent investigation. The Director of Public Prosecutions referred the case to the Coroner's Court, where it is expected to be heard on 7 July 2011.

On 27 May 2010, Keith Clarke, a 63-year-old businessman, was killed by the security forces in his home in the community of East Kirkland Heights, St Andrew, during an operation that

remains unexplained. Family members who witnessed the killing reported to the media and to the national human rights organization Jamaicans for Justice that at around 2 a.m., with helicopter support, JDF soldiers forced entry into the home saying that they were searching for a gunman. They burst into Keith Clarke's bedroom and began firing indiscriminately.

The post-mortem showed that Keith Clarke was shot 20 times: once in the face, once in the stomach, three times in the right arm and fifteen times in his left back.⁴⁴ The official statement from the Constabulary Communication Network stated: "A joint police/military operation was conducted in Kirkland Heights, Red Hills, St Andrew, at approximately 2:45 a.m. on Thursday 27 May 2010. Four members of the Jamaica Defence Force were shot and injured and one civilian killed. One firearm was recovered during the incident." Acting Deputy Commissioner of Police Glenmore Hinds claimed the operation was part of an island-wide effort to apprehend Christopher Coke.⁴⁵ The BSI is in charge of investigations into the killing and in August 2010 INDECOM announced that it would supervise the investigations. The OPD is also carrying out an independent investigation. At the time of writing, ballistic tests were pending.

ENFORCED DISAPPEARANCES

Dwayne Edwards, teenager Dale Anthony Davis, and another young man named Andre Smith were last seen in the custody of the security forces during the law enforcement operation in Tivoli Gardens in May 2010. Dwayne Edwards and Dale Anthony Davis remain unaccounted for. The body of Andre Smith was eventually found in a marked grave in the May Pen Cemetery in February 2011.⁴⁶

Dale Anthony Davis' mother reported to the press that he was taken by policemen and soldiers from his home in Tivoli Gardens on 25 May 2010. When his ailing grand-aunt, whom Dale helped to care for, asked where they were taking him, a policeman replied that he was going to the detention centre at the National Arena to be checked out.

On 8 October 2010, the BSI, which was in charge of investigating the disappearance of the three boys, said "checks with the National Intelligence Bureau, the Inspectorate Branch and a review of the list of detainees who were held at the National Arena, in Kingston, have turned up no trace of the three".⁴⁷ It also confirmed that they were not among the 73 people killed during the operation carried out in Tivoli Gardens.

INDECOM announced in January 2011 that it had assumed control of the investigation into the disappearance of Dale Anthony Davis.⁴⁸

ARBITRARY ARRESTS AND DETENTIONS

More than 4,000 people, including children, were detained under emergency regulations. Most were held without charge or trial or effective access to a court to challenge their detention. Some 980 people arrested during the first five days of the law enforcement operation in West Kingston were held at the National Arena in Kingston. They included 67 juveniles under the age of 18 and four women.⁴⁹

The Emergency Powers Regulations gave the security forces sweeping powers to "arrest without a warrant and detain, pending enquiries, any person whose behaviour is of such a nature as to give reasonable grounds for suspecting that he has a) acted or is acting in a

manner prejudicial to the public safety, or b) has committed or is about to commit an offence against these Regulations".⁵⁰ Law enforcement officials (and some others) were empowered to detain people for 24 hours. Detentions could be extended for up to five days by a Resident Magistrate or a police officer with the rank of Deputy Superintendent or above, seemingly for any reason, and then for a further five days, if it was believed that further enquiries were needed.⁵¹

The Emergency Powers Regulations also authorized the security forces to "take photographs, descriptions, measurements and fingerprints of any person" during their detention and to keep this information after the person had been released.⁵² Many people told Amnesty International that this process of fingerprinting, photographing, and recording of personal details, which was systematically applied to every individual detained, was referred to by law enforcement officials as "being processed".

Individuals could be detained indefinitely under administrative orders issued by the Minister of National Security if the Minister was "satisfied" that the person was "concerned in acts prejudicial to public safety or public order or in the preparation or instigation of such acts" and that it was therefore "necessary to exercise control over that person".⁵³ The Emergency Power Regulations stated that a Review Tribunal would be established to hear objections to such detention orders.⁵⁴

The vast majority of those detained, whether under the emergency powers granted to law enforcement officials or under detention orders issued by the Minister of National Security, were released without charge. On 28 May, the police stated that of the 700 people detained up to that point, 694 had been released.⁵⁵ On 20 July 2010, responding to questions in Parliament, the Prime Minister said that up to 14 July, 4,181 people had been detained, 83 per cent of whom had been "processed" and released without charge.⁵⁶

According to reports received by Jamaican human rights organizations and lawyers, during the security forces raids on inner-city communities, the authorities took into custody nearly all the young men they could find. Indeed, it appeared that most of the thousands of people from marginalized communities taken into custody under emergency powers were not suspected of any particular offence, but were simply "scraped up" as part of a mass "processing" campaign.

According to Jamaican human rights organizations and lawyers, the practice of arresting dozens of people not suspected of any crime and purely for the purpose of "processing" them did not begin or end with the state of emergency. They said that this practice had already existed to some extent before the state of emergency was declared and that it was still in widespread use in some communities after the end of the state of emergency. It also appears that the government has retained vast quantities of information collected through "processing" during the state of emergency, without giving any rationale for doing so. Concerns were expressed that people who had been arbitrarily detained under the special powers granted during the state of emergency are now being labelled as people "previously known to the police" and that this can be used to facilitate subsequent arbitrary actions against them.

The international human rights treaties to which Jamaica is a party require Jamaica to guarantee the right to liberty and security of the person and prohibit arbitrary arrest or detention.⁵⁷ These treaties specifically recognize the right to habeas corpus (that is, anyone “who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”).⁵⁸ In this regard, the court review of the lawfulness of detention must not be limited to assessing “mere compliance of the detention with domestic law”; it must be “in its effects, real and not merely formal”, and so incorporate a broader notion of “arbitrariness” that includes elements of inappropriateness, injustice, and necessity and proportionality.⁵⁹ Under these treaties, the prohibition of arbitrary detention, including the right to challenge the lawfulness of detention before a court and to be released if the detention is not lawful, continues to apply in situations of emergency.⁶⁰

Under emergency laws, the ordinary right to challenge the substantive basis for detention before a court is limited in practice by certain provisions of the Constitution and emergency laws.⁶¹ The Constitution contemplates that detentions under emergency laws will undergo periodic review by an administrative Review Tribunal, a body that lacks essential features and powers of a court.⁶² Under the Emergency Powers Regulations enacted during the 2010 state of emergency, an Emergency Powers Review Tribunal was established and members of the Review Tribunal were appointed on 29 May. The Tribunal was made up of three members, as required by the Emergency Power Regulations; one was appointed by the Chief Justice and two were appointed by the Governor-General.⁶³ The Tribunal, therefore, lacked the institutional independence required of a court. Other factors further weakened the Tribunal’s capacity to be an effective means for challenging the lawfulness of detentions carried out under the state of emergency:

- Under the Constitution and Emergency Powers Regulations, the tribunal had no power to order the actual release of a person whose detention was found to be unlawful. All it could do was to make a recommendation to the Minister of National Security, who was not bound to follow the recommendation.⁶⁴
- The Tribunal’s members were formally appointed five days after the declaration of the state of emergency, but the Tribunal did not in fact begin hearing cases until 29 June, leaving thousands detained in the first 37 days without any operating mechanism to challenge the lawfulness of their detention. The delay was explained as being due to the need to secure a venue for the hearings and agree on the internal rules. Such factors do not constitute a valid justification for failure to comply with the relevant international obligations.
- Out of more than 139 ministerial detention orders issued under the state of emergency,⁶⁵ the Tribunal received less than 30 cases. This is probably due to the fact that its existence had not been made adequately known to the public. Although the Emergency Powers Regulations provided that every detention order had to be accompanied by a notice informing the person against whom the order was made of his rights to make his objections to the Tribunal,⁶⁶ in reality many, if not all, of the detention orders included no reference to the right to appeal to the Review Tribunal.
- Hearings of the Tribunal were held *in camera*, with only the lawyer and some relatives of the detainee allowed to be present along with few law students. As a consequence, no scrutiny by the media or the public was possible.

- The Tribunal had no obligation to inform people challenging the lawfulness of the detention of its recommendation to the Minister of National Security.

As the Review Tribunal was, for practical purposes, the only means available to challenge the substance of ministerial detention orders, the detention regime instituted during the state of emergency violated Jamaica's international human rights obligations, described in more detail earlier, to ensure that anyone deprived of their liberty is able effectively to challenge the detention before a court.

Pinch (real name withheld) was arrested a few days after the state of emergency was declared. He had gone to the police station after being told that the police were searching for him and wanted him to present himself at the nearest police station.

He was taken into police custody and placed in a cell in the police station lock-up. Six days later, he was served with a detention order.

The Emergency Powers Regulations stated that any detention order "shall be accompanied by a notice informing the person against whom the order is made of the grounds on which such order was made" and that "as soon as practicable after an order is made" the authorities were to "furnish the person against whom such order was made with the necessary particulars to enable him to present his case to the Tribunal." However, the detention order given to Pinch was blank in the section provided for the authorities to set out the summary of the grounds for detention.

At the time of his arrest, the Review Tribunal was still not in operation. Pinch's lawyer enquired about relief at the Supreme Court and the Half Way Tree Resident Magistrate Court but was referred to the Review Tribunal.

Three weeks later, a second detention order was issued to extend Pinch's detention for another 30 days. The second detention order was also blank in the section where the grounds of the detention should have appeared.

Around the same time as the extension order was issued, and 28 days after Pinch's arrest, the Review Tribunal acknowledged receipt of the objection and a hearing was scheduled for five days later. At the hearing, it appeared that neither the Tribunal nor the representative of the Minister of the National Security had a copy of the detention order. As the representative of the Minister was unable to detail the reasons for Pinch's detention, the Tribunal instructed her to provide the grounds for Pinch's detention by the following day. When this did not happen, the Tribunal set another hearing a few days later.

At that hearing Pinch and his lawyer were finally first made aware of the grounds for his detention. A statement signed by a JCF Deputy Superintendent asserted that "intelligence" suggested that Pinch was involved in robberies, extortion of business, contract killings; that he was in possession of illegal firearms and ammunition; and that he was among those "criminal gang leaders" who had carried out unlawful activities in support of Christopher Coke. The statement also said that further detention would allow the police time for "properly putting together evidence which will allow us to prefer charges" and would prevent Pinch from interfering with potential witnesses.

At the hearing, the sole witness, a police intelligence officer, was asked why, if they had gathered this information about Pinch (including prior to the state of emergency), the police had not yet charged him. The

police representative answered that high quality intelligence and investigations suggested that he was involved in criminal activity, but they had not been able to charge him yet and were not able to say when the investigation would be complete. When the Tribunal asked the police what their definition of “high quality intelligence” was, the officer answered “sources that are really, really, really credible”.

Pinch and his lawyer were not notified by the Review Tribunal about the content of the recommendation to the Minister of National Security in relation to Pinch’s detention, and he was released (without charge) only after the emergency ended.

Pinch’s case was far from unusual. Amnesty International was informed that most, if not all, of the detention orders were “blank” in that they did not state any particular grounds for detention in the space provided for this purpose on the order form. Amnesty International also understands that in some, if not all, cases examined by the Review Tribunal, the only evidence the police presented at the review tribunal were vague references to intelligence information and/or general suspicions provided by a police officer with no direct knowledge of the individual or the matters on which he was offering evidence.

4. THE INVESTIGATIONS

“If someone calls me, and it has to do with my son, I will go. Even if I do not know where the place is. I try to be there because I want justice for what was done to my son... If every mother tried to get justice for their sons the world would be a better place. You have to stand up for your rights, not give it away”

Mother of a man killed by the security forces during the state of emergency

On 27 May, as allegations of abuses by the security forces began to be reported, the government assured the public that it would be launching independent investigations into all police/military operations carried out since the declaration of the state of emergency.⁶⁷

The OPD took a prominent role in the investigation from the first week of the state of emergency. After visiting Tivoli Gardens on 26 May, the Public Defender recommended to the security forces and the Prime Minister that they ensure full adherence to international and national standards on the use of force and firearms, and made his Office available to assist in the investigation. On 27 May, the government announced that a permanent unit of the OPD would be set up in West Kingston in order to facilitate citizens' reporting of complaints and access to information.⁶⁸ The Public Defender told the media on 28 May that his Office would be discharging its statutory functions “to investigate these complaints to determine whether or not the law enforcement arm of the state, the JCF and the JDF, has infringed any legal or constitutional right of any citizen in the purported exercise of their state of emergency powers”.⁶⁹

The government gave a commitment to make available to the OPD the resources required to carry out an investigation. As a consequence, 16 additional temporary members of staff were recruited. However, as the newly recruited officers generally lacked a professional background in carrying out such investigations, the OPD had to arrange for expedited training. The effectiveness of the additional staff was therefore limited, particularly in the early stages of the investigation.

Acting on a request from the Public Defender for access to independent forensic pathologists and ballistic experts and examinations, on 31 May the Prime Minister asked the UN and bilateral donors to provide assistance in carrying out a full investigation of the deaths in West Kingston.

Following this request, four foreign forensic pathologists were deployed between 14 June and 16 July 2010. They observed post-mortems carried out by government pathologists and submitted a report to the OPD.

A protocol was established on 14 June between the first of the independent pathologists to be deployed and a pathologist from the Legal Medicine Unit of the Ministry of National Security. However, on 16 June, the independent pathologist complained that the post-mortems were not being conducted in accordance with the agreed protocol. Among the problems he highlighted were the speed at which autopsies were being conducted, poor sanitary conditions and insufficient supervision of assistants by the government pathologist.⁷⁰ The most serious result of these shortcomings was that crucial evidence was not systematically recovered from all the bodies. As a consequence, a decision was taken to recall bodies on which autopsies had not been satisfactorily performed. In addition, the Minister of National Security fully endorsed the agreed protocol and undertook to ensure that government pathologists continued to work "in strict adherence to the established protocols".⁷¹

An international ballistic expert was first deployed in the second week of June but left shortly after as he was unable to get access to the personnel, materials and reports required. At that time, the fragments and firearms for analysis were not yet available for testing. The ballistic expert was able to carry out a scoping mission at the end of October 2010 during which he assessed the adequacy of facilities and equipment, ensured appropriate access to the relevant materials and assisted with the preparation for a technical protocol.

Amnesty International was told that the evidence to be tested includes: 300 firearm evidence packages related to incidents in Tivoli Gardens and another 75 related to the operation resulting in the killing of Keith Clarke; more than 400 bullet fragments recovered from bodies during the autopsies; and up to 900 firearms identified by the police and army as having possibly been involved in the fatal incidents.

During the scoping mission, it was decided that all the ballistic examinations would be carried out by a fully trained BSI firearm examiner and a foreign independent examiner. It was also established that the forensic firearm examinations would be carried out in three phases. The first phase, completed at the end of March 2011, enabled experts to carry out a preliminary screening and evaluation of the evidence and to determine which items would warrant further examination. The second phase will allow experts to compare items identified in phase one with firearms, through test firing of guns. The third phase will focus on reconstructing the shooting incidents by combining the physical data generated from the laboratory with the crime scene data, witness statements, scene reports, autopsy reports, photographs, notes and data collected during the processing of the event. The Public Defender has indicated that he does not expect ballistic exams to be completed before September 2011.

With the support of the international experts funded by international and bilateral donors, the OPD has been supervising the forensic examinations carried out by government technical units in relation to the killings in West Kingston. In addition, the OPD is also carrying out investigations into the other complaints received during the state of emergency. The results of the OPD investigation will be reported to Parliament.

INDECOM has so far played only a limited role in the investigation of the allegations of abuses by the security forces during the state of emergency. Since its establishment in August 2010, INDECOM has lacked the resources and suitably qualified personnel to assume direct responsibility for investigations on this scale, and consequently has limited itself to supervising the BSI investigation into the killing of Keith Clark and to taking up one of the cases of possible enforced disappearance. The INDECOM Commissioner told Amnesty International in March 2011 that if INDECOM is allocated the funds he has requested, which would enable him to hire 40 additional investigators, it would probably take over the criminal investigations into the killings in West Kingston. INDECOM would then work with the OPD and might possibly produce a combined investigation report.

INTERNATIONAL OBLIGATIONS

The incidents that occurred during the state of emergency triggered Jamaica's obligations under international human rights law to conduct independent, impartial, effective and prompt investigations. To comply with international standards, the investigations must involve and inform the victims and they must be capable of obtaining the evidence necessary to establish the facts.

The results of these processes must, among other things, provide the victims and the public with the truth about what happened; identify those responsible for any human rights violations; see those responsible brought to justice where there is sufficient evidence of crimes under national or international law (and other measures of individual accountability such as disciplinary measures where there is no such evidence); provide the victims with reparations and redress; and include measures aimed at ensuring that similar violations of human rights do not recur in the future.⁷²

SHORTCOMINGS IN THE INVESTIGATIONS

Although the provision of independent forensic pathology and ballistic expertise unquestionably constitutes progress, a number of concerns remain on the effectiveness and the promptness of the investigations. Amnesty International has received several reports of shortcomings during the initial phase of investigation. In addition, the investigations have suffered from the structural weaknesses in the Jamaican investigatory system, especially in relation to forensic services. The result has been significant delay.

It remains to be seen whether these shortcomings will ultimately compromise the ability of the investigations to generate conclusive results in terms of establishing the truth about what has happened, for victims and the public; ensuring those responsible for any human rights violations are held to account, including through the criminal justice system if appropriate; ensuring victims receive effective redress and reparations; and ensuring that measures are put in place to prevent the recurrence of violations in the future.

SHORTCOMINGS IN THE INITIAL PHASE OF THE INVESTIGATIONS

Shortly after bodies were recovered following the operation of 24 and 25 May in Tivoli Gardens, the authorities had intended to bury a number of them quickly without conducting a full forensic examination. This came to light when, on 27 May, the police announced that 15 badly decomposed bodies were being processed for burial after taking “all necessary measures to secure the identities, such as finger printing, photographs and other methods”.⁷³ The Public Defender immediately raised concerns that burying the bodies without a full autopsy and without establishing the identity of the victims would seriously harm investigations into the circumstances of the deaths. As a result, the decision to bury the bodies was revoked. However, by this time the bodies had suffered significant decomposition.

Crime scenes remained unprotected for more than 10 days. On 31 May, the Public Defender expressed concern to the BSI that none of the sites where the alleged killings took place were being treated as potential crime scenes and that rain might already have washed away crucial forensic evidence. On 2 June, he reiterated his concerns to the Police Commissioner. He stressed that not only had crime scenes not been properly protected, but on the contrary, Tivoli Gardens residents had apparently been advised by members of the security forces that they should immediately clean their houses even if a person had been killed inside by the security forces and the scene had otherwise been undisturbed. It was only after the Public Defender voiced his concerns through the media on 4 June that crime scenes and forensic experts began to be deployed to the various locations.⁷⁴

On 31 May, the Public Defender expressed concern to the BSI that none of the firearms discharged had been taken out of service for the purpose of ballistic examination. In his letter to the media dated 4 June, the Public Defender stated that he had found that, apart from some 25 firearms, the security forces had not removed from service other weapons discharged in the operation which might have been involved in the deaths of at least 73 people.⁷⁵ The Public Defender and others told Amnesty International that, initially, the JDF had been reluctant to withdraw firearms for the purpose of ballistic testing, though this appeared to have been resolved by March. Many of those who spoke to Amnesty International also commented on the lack of full and reliable record keeping by the JCF, which made it more difficult to establish which officers were carrying which weapons at a given time. Apparently JDF record keeping on this was more comprehensive.

SHORTCOMINGS IN THE FORENSIC SERVICES

The Legal Medicine Unit of the Ministry of National Security has only two forensic pathologists on staff. Even in periods of relative calm, this is an insufficient number for a country with one of the highest murder rates in the world and a very high number of fatal shootings by the police every year. In the face of the high number of fatalities in such a short period during the first days of the state of emergency, the forensic pathology capabilities of the government laboratories were grossly insufficient.

Although the government has pledged to remedy the situation, Jamaica still has no public morgue. Bodies awaiting post-mortem in the parishes of Kingston, St Andrew, St Thomas and St Catherine continue to be stored in a private funeral home or in Spanish Town Hospital through special agreements with the state.⁷⁶ However, both lack adequate refrigeration space. With the high number of deaths arising from the operations during the state of emergency, over many days many bodies were not adequately refrigerated. Eventually

refrigeration trucks were hired, but not before substantial decomposition had occurred. Moreover, the fact that the refrigerator trucks were not adapted for this use meant that even once refrigeration began, decomposition of the bodies was not halted. By the time the post-mortems were conducted, some bodies were already in an advanced state of decomposition.

The ballistic laboratory of the BSI employs three fully trained ballistic examiners, one of whom is, however, only on limited duty; six additional examiners are undertaking training. The assessment carried out in October 2010 by the international expert revealed that the laboratory had a backlog of 2,000 requests, excluding those related to shootings during the police operation under the state of emergency, and that on average between 10 and 15 new requests were received every day. The assessment also highlighted the fact that key equipment was lacking at the laboratory, including photographic equipment, stereomicroscopes and an additional comparison microscope. Following recommendations by the expert, and with the support of the USA, additional equipment was purchased in an effort to avoid adding to the existing backlog. However, this too resulted in further delays in investigations into the West Kingston killings.

Both the medical forensic and the ballistic services in Jamaica lack independence as they are respectively under the authority of the Minister of National Security and the JCF. Despite years of campaigning by Jamaican human rights organizations and Amnesty international, no independent structure has been created so far for these crucial services. In relation to the investigation of the 2010 incidents in West Kingston, this has translated into considerable delays, as international expertise had to be secured on an ad hoc basis in order to try to ensure an effective and independent investigation.

CALLS FOR A COMMISSION OF INQUIRY

Since the very first week of the state of emergency, the Public Defender has been calling for the establishment of a commission of inquiry with terms of reference encompassing the circumstances leading up to the declaration of the state of emergency, as well as all aspects of the conduct of all relevant authorities and security personnel in connection with operations during the state of emergency. Several Jamaican civil society organizations, including Jamaicans for Justice and other human rights organizations, have supported this call for a commission of inquiry.

In October 2010, the government announced the creation of an independent commission of inquiry, but its terms of reference excluded allegations of serious human rights violations and other abuses by the security forces during the state of emergency. Instead, its mandate was limited to investigating the manner and the procedure by which the extradition request for Christopher Coke was handled by the Jamaican government, the circumstances in which the services of a law firm had been engaged to deal with this issue, and whether there had been any misconduct in either of these two areas.⁷⁷

The government has so far not made a commitment to appoint an independent commission of inquiry to establish the truth about what happened.⁷⁸ In a statement dated 24 February 2011, the Prime Minister said that: “the Government will await the report of the Public Defender into the matter before deciding as to whether a Commission of Inquiry should be established”.⁷⁹ Various observers have pointed out that it should already be clear that a commission of inquiry is necessary, and there is nothing to prevent steps being taken immediately to establish and

prepare a commission so that it can begin its substantive work as soon as the Public Defender's investigations are complete.

Although previous experience has shown that the appointment of a commission of inquiry does not in itself guarantee the independence or the effectiveness of an investigation,⁸⁰ the Public Defender and many Jamaican civil society organizations believe that such a commission is the best way to shed light on incidents which have raised concerns about possible human rights violations. While criminal investigations may result in those responsible for individual crimes being brought to justice, they cannot directly address the overall scale of the alleged violations; human rights violations that are not necessarily criminal in nature, or for which evidence to the high standard required for criminal proof is not available; or whether policies or practices made it more likely that violations would be committed.⁸¹ If the terms of reference are well crafted, a commission of inquiry would enable a holistic approach to fact-finding to be adopted. In addition to clarifying the facts and establishing individual and institutional responsibility, a commission of inquiry would also allow measures to be identified that could help prevent abuses being committed in the future.

5. CONCLUSIONS AND RECOMMENDATIONS

“If justice isn’t done, this policeman will go around and continue doing the same thing, taking innocent people’s lives”

Mother of Sheldon Gary Davis, who was killed by the security forces during the state of emergency

Jamaica has a poor record of ensuring accountability for human rights violations by the security forces. This is especially true of abuses against people living in marginalized communities, like Tivoli Gardens. The victims of such violations in the past have often been denied their right to justice. The authorities must ensure that this time, the victims and their families are told the truth about what happened and receive redress for abuses they have suffered; and that anyone found responsible for human rights violations is brought to justice.

CONCLUSIONS

In conclusion, Amnesty International’s research found that:

- There are numerous credible allegations of serious human rights violations having been committed under the 2010 State of Public Emergency, including unlawful killings and arbitrary detention.
- It is still not clear exactly how many people were affected by the conduct of the security forces during the state of emergency. The number of people killed and injured by the security forces as a result of the law enforcement operation in Tivoli Gardens between 24 and 25 May 2010, and the number of people killed or injured in other operations during the state of emergency have yet to be satisfactorily determined. Exact statistics on the number of people detained and of those charged under the Emergency Power Regulations have not been released. Equally, details about the number of people still in detention, the length of time people were held, and the charges brought have not been made available. The number of people whose property was maliciously destroyed or looted by the security forces also remains unclear.
- The detention regime, and particularly the failure to ensure that all detainees had access to an effective means of challenging their detention before a court capable of ordering release, appears to have been inconsistent with Jamaica’s international human rights obligations.

- The allegations of human rights violations under the state of emergency give rise to obligations to conduct independent, impartial, effective and prompt investigations.
- The current investigations into the killings that occurred under the state of emergency in West Kingston in May 2010 have so far proved to have a certain degree of independence, representing an unquestionable improvement compared to previous investigations of major incidents. This is mainly due to the prominent role taken by the Office of the Public Defender and to the fact that he has so far successfully asserted his Office's status as an independent institution. Thanks to this, and to the support received by international and bilateral donors, independent forensic pathology and ballistic expertise has been secured. If Independent Commission of Investigation (INDECOM) is fully resourced, this would be a further indication that criminal investigations into the killings would be conducted with an unprecedented degree of independence.
- Initial failures to preserve evidence and structural weaknesses in the investigative system may have compromised the results of investigations and resulted in serious delays.
- Given the number and gravity of the allegations, the number of questions that remain unanswered and the impunity for human rights violations enjoyed by members of the security forces in the past, international standards support the call of the Public Defender and of Jamaican human rights organizations, such as Jamaicans for Justice, for the appointment of an independent commission of inquiry.
- Previous experiences of commissions of inquiry have shown that such a commission will only have a significant impact in addressing allegations of human rights abuses during the 2010 State of Public Emergency if it is provided with adequate powers and resources; its independence is guaranteed; and its processes and practices uphold the fundamental principles of transparency, openness and the involvement of victims and other interested parties.

RECOMMENDATIONS

Expedite ongoing investigations

- Allocate additional resources in order to expedite the completion of ballistic examinations;
- Provide the necessary resources to INDECOM so that it can take over from the BSI the investigation of all complaints related to the operation in West Kingston under the state of emergency.

Ensure that investigations produce justice and remedy

- Ensure that criminal proceedings are instituted and capable of leading to trials in all cases where the investigations produce sufficient evidence of human rights violations constituting crimes;
- Ensure other measures for accountability, including disciplinary proceedings, in respect of anyone found responsible for human rights violations that do not amount to crimes;
- Ensure that all victims of human rights violations receive full remedy and reparation;

- If section 45 of the Emergency Powers Regulations, which purported to confer certain immunities on members of the security forces, would have any effects inconsistent with these recommendations, ensure such effects are eliminated, through legislation if necessary;⁸²
- Provide adequate protection to complainants, witnesses, those conducting the investigation, and their families, from violence, threats of violence or any other form of intimidation.

Appoint an independent commission of inquiry with a broad mandate and powers

Terms of reference:

- Clearly define the terms of reference and frame them in a manner that does not suggest a predetermined outcome;
- Frame the terms of reference in a way that will require the commission to assess the operations carried out by the security forces against international standards on the use of force and firearms and other relevant human rights standards;
- Include the possibility that the commission can refer matters to INDECOM for further criminal investigation, potentially leading to prosecution;
- Include an obligation on the commission to formulate recommendations on how the security forces should operate in future;
- Include an obligation on the commission to identify all Jamaican laws and practices relating to states of emergency that are inconsistent with Jamaica's international human rights obligations, and to recommend reforms to address any gap;
- Consult with civil society organizations in drawing up the commission's terms of reference.

Powers and authority:

- The commission should have the authority to obtain all the information necessary to the inquiry – for example, for determining the cause, manner and time of death – including the authority to compel testimony under threat of legal sanction; to order the production of documents, including government and medical records; and to protect witnesses, families of the victim and other sources;
- The commission should have the authority to produce interim public reports and be required to produce a final full report for publication;
- The commission should have the authority to conduct on-site visits and to receive evidence from witnesses and organizations located outside the country;
- The commission must be provided with independent investigators.

Composition:

- Members should be recognized for their impartiality, competence and independence;
- There should be no less than three members, in order to ensure the objectivity of the investigation;
- Proposals for potential members should be solicited from Jamaican human rights organizations;
- Civil society should be consulted about appointments to the commission.

Involvement of victims and other parties:

- Inform all surviving victims, the families of victims and their legal representatives of all hearings and ensure they receive all information relevant to the investigation;
- Ensure families of the deceased and their legal representatives are entitled to present evidence;
- Provide other interested parties with the opportunity to be heard;
- Allow all witnesses to have legal counsel if they are likely to be harmed by the inquiry;
- Provide an opportunity for effective questioning of witnesses by the commission and for parties to the inquiry to submit written questions to the commission.

Openness to public scrutiny:

- All proceedings of the commission, and the evidence collected by it, should be open to public scrutiny;
- Hearings should be open to the public and press, unless compelling and demonstrably justifiable reasons exist for the closure of a particular part of the proceedings to the general public, in which circumstances the commission should be required to find some other means of making public the substance of the information received during the closed part of the hearings;
- Any claims by government officials that information must be withheld, whether from the commission, from victims or their lawyers, or from the general public, on grounds such as “state secrets” or “public security” should be subject to challenge and ultimate determination by a court or other institution independent of the government;
- In no case should it be permitted to invoke “state secrets” or other similar grounds for non-disclosure of evidence in a manner that would prevent an independent, impartial and thorough investigation into allegations of serious violations of human rights; prevent accountability where such violations are established; prevent the truth emerging about serious human rights violations; or prevent those who have suffered human rights violations from obtaining effective remedy and reparation.

Commission report and government response:

- A public report should be released within a reasonable period of time. This should include a description of the method(s) by which evidence was gathered and evaluated; an analysis of the applicable law and policy frameworks, including international human rights standards;

conclusions and findings of fact, including attribution of responsibility where possible; and recommendations for policy and other reforms;

- Where findings are not unanimous, commissioner(s) should be permitted to file a public dissenting opinion;
- The government should reply publicly to the report and indicate the steps it intends to take to implement its recommendations.

Ensure effective measures are in place to prevent unlawful use of deadly force

- Ensure that all members of the Jamaica Constabulary Force (JCF), and any members of the Jamaica Defence Force (JDF) who may become involved in law enforcement operations, are familiar with the provisions of the JCF Human Rights and Police Use of Force and Firearms Policy, and respect its terms in practice;
- Ensure that the measures contemplated by the JCF Human Rights and Police Use of Force and Firearms Policy for the prevention of unnecessary use of lethal force are fully implemented and that anyone who fails to respect such requirements of the Policy is held to account;
- Ensure the full implementation of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in Jamaican law, policy and practices;
- Ensure that both JCF and JDF maintain adequate records of the allocation, possession, and use of individual firearms that ensure later identification of the individual responsible for each weapon at any given point in time;
- Ensure that the reform of the police is fully and systematically implemented.

Put in place additional measures to ensure the preservation of evidence

- Ensure that crime scenes are adequately protected in all circumstances;
- Ensure that the JCF and JDF establish and implement measures to withdraw firearms discharged in shooting incidents immediately so that these can be promptly tested by the ballistic services.

Take immediate steps to enhance the capacities and independence of forensic services

- Enhance the human resources of the forensic pathology services, including by recruiting additional forensic pathologists and ensuring continuous training and professional development of forensic pathologists and technical staff;
- Establish as a matter of urgency a public morgue equipped with adequate refrigeration apparatus;
- Enhance the physical facilities and equipment needed to carry out autopsies, including X-ray facilities and fully equipped autopsy rooms;

- Improve sanitary working conditions and ensure health and safety for all staff carrying out autopsies;
- Ensure that the protocol endorsed by the Minister of National Security for carrying out autopsies on the bodies recovered in Tivoli Gardens in May 2010 is implemented for every autopsy carried out in Jamaica in cases of fatal shootings by the police;
- Enhance the independence of the forensic pathology services to ensure that authoritative and reliable information is available for families, INDECOM, courts, human rights organizations and all parties interested in an independent investigation into all deaths at the hands of agents of the state;
- Recruit and train additional firearm examiners;
- Purchase additional equipment and ensure appropriate maintenance of all equipment at the ballistic laboratory;
- Take all other necessary measures to expedite forensic examinations of firearms and reduce the backlog of the ballistic laboratory;
- Enhance the independence of the ballistic services.

Support the work of the Special Coroner

- Provide adequate resources to the Special Coroner appointed in February 2011 to deal with deaths caused by agents of the state.

Support the work of the Independent Commission of Investigations

- Provide adequate resources to INDECOM so that it can achieve the strategic objectives set out in its 2011-2014 Corporate Plan;
- Ensure that INDECOM receives full co-operation from other state agencies involved or interested in the investigations, such as the JCF, the JDF, and the Office of the Director of the Public Prosecutions.

ENDNOTES

¹ Extrajudicial executions are unlawful and deliberate killings, carried out by order of a government or with its complicity or acquiescence. An extrajudicial execution is, in effect, a murder committed or condoned by the state.

² See for example *Jamaica Observer*, "Have a People's Commission of Inquiry into Tivoli killings", 27 January 2011.

³ *The Gleaner*, "Witter laments human rights abuse", 31 January 2011.

⁴ According to Section 26 of the Jamaican Constitution, a proclamation declaring the state of public emergency can be issued by the Governor-General if he is satisfied "that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life."

⁵ The USA formulated the extradition request in August 2009. On 17 May 2010, the Jamaican Prime Minister announced his government's decision to sign the extradition request. The manner and procedure in which the extradition request was handled by the Jamaican government and the role and conduct of the various public officials who handled the extradition request were the subject of a Commission of Inquiry. The Commission held hearings between January and April 2011 and is expected to transmit a report and recommendations to the Governor-General on 6 June.

⁶ See *Jamaica Observer*, "Tivoli Gardens tour reveals little", 28 May 2010.

⁷ After a court hearing on the extradition procedure, Christopher Coke was extradited to the USA on 25 June 2010. He did not challenge the sentence and did not ask for an appeal. He is now awaiting trial for drug-trafficking and firearms charges.

⁸ *Jamaica Observer*, "State of Emergency extended by one month", 23 June 2010. After a court hearing on the extradition procedure, Christopher Coke was extradited to the USA on 25 June 2010. He did not challenge the sentence and did not ask for an appeal. He is now awaiting trial for drug-trafficking and firearms charges.

⁹ Office of the Prime Minister, "State of Public Emergency for St. Catherine, Kingston and St. Andrew until July 22", 23 June 2010, available at http://www.opm.gov.jm/news_and_public_affairs/state_of_public_emergency_for_st_catherine_kingston_and_st_andrew_until_july

¹⁰ *Jamaica Observer*, "We are doing it for the country", 1 June 2010.

¹¹ *The Gleaner*, "Tivoli Gardens, blueprint for attack on gangs", 2 June 2010.

¹² The UPR is a process which takes place at the UN Human Rights Council, involving a peer review of the human rights records of all 192 UN member states once every four years. During the UPR of Jamaica, which took place in November 2010, the government received and responded to a series of questions, comments and recommendations. The outcome of the review was adopted by the Human Rights Council in March 2011. Jamaica indicated at that time that it would support 72 of the 121 recommendations made to it by other states, and that it would examine a further 23. The documentation

related to the review of Jamaica is available at
<http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CJMSession9.aspx>

¹³ UN Document A/HRC/WG.6/9/L.12, paragraph 99.25.

¹⁴ See Amnesty International, *“Let them kill each other”*. *Public security in Jamaica’s inner-cities* (Index: AMR 38/001/2008) and *Public security reforms and human rights in Jamaica* (Index: AMR 38/001/2009).

¹⁵ The link between violence and politics has been highlighted by many criminologists and acknowledged by the Report of the National Committee on Political Tribalism issued in July 1997. The Committee was appointed in 1997 by the then Prime Minister and its findings have been acknowledged by the current Prime Minister. The Report defined a garrison community as “one in which anyone who seeks to oppose, raise opposition to or organize against the dominant party would definitely be in danger of suffering serious damage to their possessions or person thus making continued residence in the area extremely difficult if not impossible. A garrison, as the name suggests, is a political stronghold, a veritable fortress completely controlled by a party. Any significant social, political, economic or cultural development within the garrison can only take place with the tacit approval of the leadership (whether local or national) of the dominant party”.

¹⁶ The historical links between violence and politics has been acknowledged by the broad-based National Committee on Political Tribalism appointed in 1997 by the then Prime Minister.

¹⁷ Between 2007 and 2008 a strategic review of the JCF was conducted by a panel of domestic and international experts. It resulted in 124 recommendations issued in June 2008 and mostly accepted by the government. Amnesty International, along with national human rights organizations and academics, welcomed the review believing that the overall package of proposed reforms could, if implemented, help to bring policing in Jamaica into line with international human rights standards.

¹⁸ A total of 99 members were arrested between 2009 and 2010 and 71 civilians were arrested for attempting to bribe police personnel over the same period. The JCF Anti-Corruption Strategy 2010-2012 is based on three pillars: a) prevention of corruption mainly through the implementation of a JCF cleansing programme; b) education, training and communication to ensure that all JCF staff and the public are aware of the strategy; c) detection and prosecution of JCF staff who act corruptly and those who seek to corrupt staff.

¹⁹ Periodic polygraph testing of senior management team members and staff in identified sensitive posts has been introduced across the force. A further programme of randomly assigned polygraph tests is also in the process of being introduced, including for allegations of a criminal nature.

²⁰ Permanent regional courts of inquiry were established as prescribed by Recommendation 30 of the review to deal with serious disciplinary matters. The backlog of some 500 outstanding disciplinary cases has been cleared. However, the prescribed appointment of retired judges and independent senior lawyers to the courts has not been implemented, at least not nearly to the degree foreseen by the recommendations.

²¹ The JCF is delivering human rights training to new recruits primarily by providing time in the training schedule for sessions led by national human rights groups and experts. In addition, a safe encounter training module was developed and has been inserted in the training curriculum for new recruits. Its stated aim is to ensure that human rights are respected whenever physical contact takes place through arrest, prisoner escort or personal searches.

²² The government set up the Justice System Reform project to undertake a comprehensive review of the state of the justice system and develop strategies and mechanisms for its modernization. Amnesty International, along with national human rights organizations and academics, expressed the view that the implementation of the recommendations could significantly improve access to justice for victims of criminal and police violence.

²³ The Police Public Complaints Authority (PPCA) was established in 1992 as an independent body to monitor and supervise investigations by the police into killings by police and other complaints against the police. As documented by Amnesty International and by Jamaican human rights organizations, the PPCA had limited effectiveness and independence as it could not conduct its own investigations and relied on the police force to conduct some of its investigations. It lacked the authority to make final determinations on criminal charges and to obtain statements from police officers if they were not willing to co-operate. The PPCA was understaffed and under-resourced. It therefore enjoyed a very low level of public confidence.

²⁴ See *RJR News*, "Shaw defends tripling INDECOM budget", 19 April 2011. The INDECOM Corporate Plan 2011-2014 foresees that the Commission should be resourced with 138 staff responsible for implementing case management plans, conducting investigations, assessing complaints, crime scene investigations and crime scene forensic examinations. The Plan also foresees the engagement of experienced overseas foreign investigators for a period of five years in order to facilitate capacity building of national investigators and the implementation of a training programme for local investigative staff. Among the targets set out in the Plan are: a) to commence investigations within two hours of report; b) to complete investigations of general complaints within 30 days and of major complaints within 60 days; and c) to inform complainants about the status of the investigation every 15 days.

²⁵ Presentation of Minister of Justice, State of Nation debate, 2009.

²⁶ Development of the strategy is piloted by the Ministry of National Security. It is reported in the Foreword of the draft strategy that it "represents an integration of over 50 consultations from public and private sector bodies, civil society, NGOs, international development partners, and residents from the parishes of Kingston and St. Andrew, St. Catherine, Clarendon and St. James."

²⁷ Stakeholders consulted for the formulation of the strategy agreed on the following definition of crime prevention and community safety: "preventing, reducing or containing the social, environmental and intimidatory factors which affect people's right to live without fear of violence and crime and which impact upon their quality of life, and includes preventive measures that contribute to violence and crime reduction and tackle anti-social behaviour."

²⁸ The pilot phase of the programme has started at the end of March 2011 and focus on 100 communities in West and Central Kingston, tackling poor housing, poor infrastructure, weak community governance and lack of co-ordination of social intervention programmes.

²⁹ US District Court of the Southern District of New York, indictment against Christopher Coke.

³⁰ See for example, *The Courier*, "Christopher 'Dudus' Coke and the phenomenon of garrison communities", July/August 2010.

³¹ This quote is taken from *Homeland Security Today*, "Global After Action: The Rise and Fall of Dudus Coke", 1 October 2010. It was reportedly referred to Al Jazeera English.

³² Ministry of National Security, Concept note: Re-engagement and Development: The post-conflict

response of the state, May 2010, included in the National Crime Prevention and Community Safety Strategy, Ministry of National Security, October 2010.

³³ Amnesty International, "...Until their voices are heard..." – *The West Kingston Commission of Inquiry*, (Index: AMR 38/010/2003). In this report, Amnesty International highlighted the Commission's numerous deficiencies, including the failure to appoint an independent investigator, to test evidence fully and cross-examine witnesses and to ensure balance in terms of representation. The hearings and the subsequent report completely failed to address violations of the right to life.

³⁴ The Public Defender is a commission of Parliament, established by the Public Defender (Interim) Act, 1999. The Public Defender is appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition. The Public Defender is responsible for investigating cases where an individual or a group of people might have suffered an injustice as a result of any action taken by an authority or an officer or member of an authority in the exercise of the administrative functions of that authority. The Public Defender is also mandated to investigate cases where there is suspicion that someone has suffered, is suffering or is likely to suffer an infringement of his/her constitutional rights as a result of any action taken by an authority or an officer or member of that authority.

³⁵ *The Gleaner*, "Witter laments human rights abuses", 31 January 2011.

³⁶ Office of the Prime Minister, "73 Bodies recovered from Tivoli Gardens", Bulletin 17, 27 May 2010, available at http://www.opm.gov.jm/news_and_public_affairs/73_bodies_recovered_from_tivoli_gardens

³⁷ Jamaica Information Service, "Commissioner of Police, Owen Ellington, Press briefing Friday May 28 2010", 29 May 2010.

³⁸ *The Guardian*, "Jamaican army accused of murdering civilians in Tivoli Gardens", 27 May 2010.

³⁹ See for instance, the UN Code of Conduct for Law Enforcement Officials, UNGA Res 34/169 (17 December 1979) and the UN Basic Principles on the Use of Force or Firearms by Law Enforcement Officials (adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990), as well as the JCF Human Rights and Police Use of Force and Firearms Policy (revised 2008). Use of potentially lethal force that is arbitrary or unlawful violates the right to life, under for instance article 6(1) of the International Covenant on Civil and Political Rights.

⁴⁰ *Jamaica Observer*, "Cops confident ongoing search will turn up more guns and ammunition in Tivoli", 1 June 2010.

⁴¹ Office of the Prime Minister, "State of Public Emergency for St Catherine, Kingston and St Andrew until 22 July", 23 July 2010, available at http://www.opm.gov.jm/news_and_public_affairs/state_of_public_emergency_for_st_catherine_kingston_and_st_andrew_until_july

⁴² *Jamaica Observer*, "Cops kill 3 in Mountain View; residents upset", 28 May 2010.

⁴³ The story was also the object of the documentary "Victims' Voices" produced by Jamaicans for Justice with the support of the Human Rights Center of the University of California and of the European Union. It is available at <http://www.youtube.com/watch?v=9kWEIVHj5Y>

⁴⁴ *Go-Jamaica*, "Keith Clarke's post-mortem reveals he was shot 20 times", 3 June 2010.

⁴⁵ *The Gleaner*, "Deadly Dudus Raid", 28 May 2010.

⁴⁶ United States Department of State, 2010 Human Rights Report: Jamaica, available at <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁴⁷ *The Gleaner*, "Without a trace", 8 October 2010.

⁴⁸ Independent Commission of Investigations press release, "INDECOM takes probe into the disappearance of Tivoli teen – Dane Anthony Lewis", 21 January 2011.

⁴⁹ Office of the Prime Minister, "980 Persons processed and released by JCF", Bulletin 40, 29 May 2010 available at http://www.opm.gov.jm/news_and_public_affairs/980_persons_processed_and_released_by_jcf

⁵⁰ Emergency Power (no 2) Regulations 2010, Jamaica Gazette, Vol CXXXIII, No. 44 (22 June 2010), pp 201-230, Article 31(1).

⁵¹ Emergency Power (no 2) Regulations 2010, Article 31(2) and (3).

⁵² Emergency Power (no 2) Regulations 2010, Article 31(4).

⁵³ Emergency Power (no 2) Regulations 2010, Article 34.

⁵⁴ Emergency Power (no 2) Regulations 2010, Article 38.

⁵⁵ Office of the Prime Minister, "Six Detainees left at Arena", Bulletin 37, 28 May 2010 available at http://www.opm.gov.jm/news_and_public_affairs/six_detainees_left_at_arena

⁵⁶ *The Gleaner*, "4000 detained under State of Emergency", 21 July 2011.

⁵⁷ International Covenant on Civil and Political Rights (ICCPR), Article 9; American Convention on Human Rights (ACHR), Article 7.

⁵⁸ ICCPR, Article 9(4); ACHR, Article 7(6).

⁵⁹ Human Rights Committee, *A. v Australia* (1997), UN Doc CCPR/C/59/D/560/1993, paras 9.2-9.5.

⁶⁰ See Human Rights Committee, General Comment no 29: States of Emergency (2001), UN Doc .N. Doc. CCPR/C/21/Rev.1/Add.11, paras 11 and 16; Inter-American Court of Human Rights, *Advisory Opinion on Habeas Corpus in Emergency Situations*, (1987) Advisory Opinion OC-8/87, Series A, No. 8, paras 13, 42-44.

⁶¹ Constitution of Jamaica, 1962, Section 15 generally recognizes and protects the right to personal liberty and prohibits the arbitrary deprivation of liberty, but Article 15 (5) states that: "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency."

⁶² Constitution of Jamaica, 1962, Section 16(6) and (7).

⁶³ Emergency Power (no 2) Regulations 2010, Article 38(2)

⁶⁴ Emergency Power (no 2) Regulations 2010, Article 38(8) and (9). Constitution of Jamaica, 1962, Article 15(7).

⁶⁵ *The Gleaner*, "4000 detained under State of Emergency", 21 July 2011.

⁶⁶ Emergency Power (no 2) Regulations, Article 38(11)(b).

⁶⁷ Office of the Prime Minister, "Public Defender's Office to be set up in West Kingston", Bulletin 20, 27 May 2010 available at http://www.opm.gov.jm/news_and_public_affairs/public_defenders_office_set_up_in_west_kingston

⁶⁸ Office of the Prime Minister, "Public Defender's Office to be set up in West Kingston", Bulletin 20, 27 May 2010.

⁶⁹ Office of the Prime Minister, "Public Defender sets up office in Tivoli Gardens", Bulletin 29, 28 May 2010.

⁷⁰ *The Gleaner*, "Autopsy nightmare, say observer", 17 June 2010.

⁷¹ *The Gleaner*, "Autopsies to resume", 17 June 2010.

⁷² See, for example, International Covenant on Civil and Political Rights (ICCPR), Article 2; Human Rights Committee General Comment no. 31: "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", UN doc CCPR/C/21/Rev.1/Add.13 (26 May 2004), paragraphs 15-18; UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council resolution 1989/65 (24 May 1989), Annex; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147 (16 December 2005); Inter-American Court of Human Rights, *Velásquez-Rodríguez v Honduras* (1988), Series C No. 4 [Merits], paras 166,175-176.

⁷³ Office of the Prime Minister, "Public Defender's Office to be set up in West Kingston", Bulletin 20, 27 May 2010.

⁷⁴ *The Gleaner*, "Preserve crime scenes – Witter", 4 June 2010.

⁷⁵ *The Gleaner*, "Preserve crime scenes – Witter", 4 June 2010.

⁷⁶ Amnesty International received information that plans for the construction of a public morgue had been on track but were delayed as the project was not included in the annual budget for 2011/2011.

⁷⁷ Jamaica Information Service, "Statement to Parliament on the appointment of the Commission of Inquiry relating to extradition request of Christopher Coke & Manatt, Phelps & Philips", 19 October 2011.

⁷⁸ During the UPR of Jamaica which took place in November 2010, the government rejected a recommendation formulated by the United Kingdom to "Establish an independent commission of inquiry into the events surrounding the Tivoli Gardens incident in May 2010" (UN Document A/HRC/WG.6/9/L.12, paragraph 100.17).

⁷⁹ *Jamaica Observer*, "PM says no decision on Tivoli enquiry before Public defender's report", 24 February 2011.

⁸⁰ See for example Amnesty International, "...Until their voices are heard..." – *The West Kingston Commission of Inquiry*, (Index: AMR 38/010/2003).

⁸¹ See Article 11 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, ECOSOC res 1989/65 (24 May 1989), identifying such circumstances as requiring the government to "pursue investigations through an independent

commission of inquiry or similar procedure.”

⁸² Section 45(1) of the Emergency Powers Regulations purports to exempt all members of the security forces from any lawsuit, prosecution or other proceeding, for any act they have done in good faith for public purposes during the state of emergency, and section 45(3) provides for the Minister to issue certificates deeming these requirements to be fulfilled in given cases. It is to be hoped that Jamaican courts and authorities would, in practice, deny the application of section 45 to any act that contributed to any arbitrary killing, enforced disappearance, or such criminal human rights violation. However, given the very broad language in which is drafted, the risk remains that section 45 might be successfully invoked in a manner inconsistent with international human rights standards, which do not permit public emergency of superior orders to be invoked in justification of, among other things, extrajudicial executions or enforced disappearances.



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JAMAICA: A LONG ROAD TO JUSTICE?

HUMAN RIGHTS VIOLATIONS UNDER THE STATE OF EMERGENCY

On 23 May 2010, a state of public emergency was declared in Kingston and St Andrew parishes in Jamaica. Within two days, at least 74 people, including a soldier, were reported to have been killed in the inner-city community of Tivoli Gardens. At least 40 of those killed in Tivoli Gardens are alleged to have been unlawfully killed by the security forces. Over 50 people were seriously injured in the violence, more than half of them members of the security forces. More than 4,000 people were detained, most of whom were released without charge or trial. Two people detained by the security forces remain unaccounted for.

The violence witnessed under the state of emergency was unprecedented in scale in modern Jamaica. However, the circumstances that gave rise to it are not new: social and economic exclusion of certain communities, which are effectively ruled by criminal gangs; persistent patterns of excessive use of firearms by police; and impunity for these and other abuses by the security forces. All of these remain deeply entrenched despite recent efforts at systematic reform.

One year after the state of emergency was declared, and despite compelling testimonies of serious human rights violations, investigations have yet to provide conclusive answers about what happened during the state of emergency or to lead to any criminal proceedings. Amnesty International is adding its voice to the calls from independent organizations in Jamaica for a full independent public inquiry into the security operation under the state of emergency.

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