

UNIVERSAL PERIODIC REVIEW OF JAMAICA

SUBMISSION BY SHAREHOLDER COALITION FOR THE UNIVERSAL PERIODIC REVIEW OF JAMAICA UN HUMAN RIGHTS COUNCIL NINTH SESSION (November 2010)

This submission is a concerted effort by an informal coalition of 8 NGOs dedicated to the defence and monitoring of human rights in Jamaica.

Leading this coalition is **Jamaicans for Justice**, a non-profit, non-partisan, non-violent volunteer citizens' rights action group founded in 1999. It works to bring about fundamental change in Jamaica's judicial, economic, social and political systems in order to improve the present and future lives of all Jamaicans.

The coalition is composed of the following NGOs, who have signed onto this report:

- **Women's Resource and Outreach Center (WROC)**
 - WROC aims to provide holistic services and programmes that promote gender equality and the empowerment of women and youth. These services and programmes are rooted in the attainment of women's rights as described in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as well as the achievement of the Millennium Development Goals (MDGs), to which Jamaica is a signatory.
- **WOMAN Inc.**
 - WOMAN INC is a private, charitable, non-profit, non-governmental organization operating in Jamaica since 1984, dedicated to providing assistance to the victims of rape, incest, sexual harassment at the workplace and domestic violence. The objective of Woman Inc is to promote the welfare of women through the maintenance of Crisis Centres and Shelters.
- **Amnesty International (Jamaica Chapter)**
 - Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights for all.
- **Peace Management Initiative (PMI)**
 - PMI is an early intervention mechanism, which works proactively to prevent conflict from rising to the level of violence, and to strengthen civic organizations that provide stability, sustainable development, security and pride within inner-city communities.
- **MENSANA**
 - Mensana works to promote and enhance the capabilities of persons with mental illnesses who, with appropriate services, can remain healthy, have

positive life outcomes, make decisions concerning their lives, and live as independent and productive citizens to varying degrees.

- **Citizens' Action for Free and Fair Elections (CAFFE)**
 - CAFFE is a primary player in the area of election activity, particularly concerning campaign transparency and integrity.
- **The Independent Jamaican Council for Human Rights**
 - The Council advocates for Constitutional and legislative reform in several areas and advocates for the abolition of the death penalty. It champions the rights of persons who are abused by the state.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. Jamaica is party to the following international conventions:
 - International Covenant on Civil and Political Rights,
 - International Covenant on Economic, Social and Cultural Rights,
 - International Convention on the Elimination of All Forms of Racial Discrimination,
 - Convention on the Elimination of All Forms of Discrimination against Women,
 - Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
2. Jamaica has also signed but not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
3. In 1998 Jamaica withdrew from the Optional Protocol to the International Covenant on Civil and Political Rights.
4. In addition, within the context of the Organization of American States, Jamaica is a State party to the American Convention on Human Rights.
5. There have been calls for the Jamaican authorities to ratify as appropriate and to abide by the principles of the :
 - UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - UN Code of Conduct for Law Enforcement Officials
 - UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
 - UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
 - UN Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment
 - UN Rules for the Protection of Juveniles Deprived of their Liberty
 - American Convention on Human Rights
 - UN Convention on the Rights of the Child
 - UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
 - UN Guidelines on the Role of Prosecutors
 - UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

- UN Declaration on Human Rights Defenders
6. The government of Jamaica has promised to sign and ratify the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (Optional Protocol) (CEDAW). Today, it still remains unsigned. Until such a time, women who have exhausted all legal means at the local level will have no recourse with regard to their right to take their complaints to the CEDAW.¹
 7. The Government should ratify the Convention of Belem do Para (The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women). Jamaica became a State Party to the Convention in December 2005.

B. Constitutional and legislative framework

8. The Jamaican Constitution was passed as an order in council in 1962. Fundamental rights are captured in Chapter 3 of the Constitution. Of special significance is the fact that the Constitution does not prohibit discrimination on the grounds of gender and sexual orientation. The legal framework is based on the British Common Law.
9. The Government should pass, with wide consultation, the following Bills which have been stagnating in the Parliamentary process:
 - The Sexual Harassment Bill
 - The Charter of Rights and Freedoms Bill.

C. Institutional and human rights structure

10. Although Jamaica has quite an array of institutional and human rights structures, they are all seriously underfunded and left to assume their responsibilities with insufficient help from the state and insufficient focus on institutional reform rather than single case intervention. These structures include the Office of the Public Defender, the office of the Children’s Advocate and the Political Ombudsman’s office.
11. The Government of Jamaica is strongly urged to set up a focal legal person or entity to accelerate human rights legislation and also to focus on Government's compliance with international treaties, especially treaties like CEDAW.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS

Implementation of international human rights obligations

GENERAL CONTEXT

12. Jamaica has one of the highest rates of violent crime in the world. Most victims of this violence live in deprived and excluded inner-city areas where unemployment rates are high and access to basic services – water, electricity and security of housing tenure – are often poor. Some of these neighbourhoods have been neglected by the state for years, and many have effectively become the fiefdoms of gang leaders. Criminal gangs

¹ Women’s Rights as Human Rights, Though a “Gendered Perspective”, Association of Women's Organizations in Jamaica (AWOJA), 2010

not only control communities through fear and violence, they also control access to what few services are available.

13. The police estimate that gang-related violence in so-called “garrison communities”, where tribalist politics in Jamaica flourish, and where the ruling gangs have for years acted under the patronage of one or other of the political parties, account for up to 70% of all murders in Jamaica. These political connections make it difficult for progress in reducing violence.
14. This situation has been well-documented and analysed by both the government and the national and international NGOs operating in Jamaica, as well as the civil society representatives.^{2 3 4 5 6 7 8}

➤ **Public security vs. human rights**

15. The situation described above should normally bring the government to respond by protecting and re-assuring its population in the face of such violence. However, in the case of Jamaica, the reaction of the authorities has led to any even greater level of violence and public insecurity. Police abuse of power and use of excessive force, lack of accountability and outright impunity for whatever action the police may take (including killing of innocent citizens being billed as “collateral damage”) and corruption within the police force (this has been recognized by the police authorities themselves in the numerous reports cited above) have led to a public security crisis in Jamaica.
16. Attempts to control crime have generally involved the use of heavy-handed “crime-fighting” methods including extra-judicial killings, death threats, beatings, torture and ill treatment during questioning or detention by the security forces. Jamaica has resorted to legislative curtailment of rights rather than actions targeted at prevention of crime and upholding the rule of law by all.

Police killings and impunity

➤ **Extrajudicial killings by the police**

17. Statistics for 2007 confirm that what had been a borderline human rights emergency in 2000 had become, by early 2008, an alarming situation, with over 270 victims of police

2 “Public security reforms and human rights in Jamaica”, Amnesty International, AMR 38/0012009

3 “Jamaican Justice System Reform Task Force 2007

4 “Road Map to a Safe and Secure Jamaica”, The report of the Civil Society Panel, (commissioned by the then Leader of the Opposition, Mr. Bruce Golding), 2006

5 “Killings and violence by Police: How many more victims?”, Amnesty International, 2001

6 “Let them kill each other: Public security in Jamaica’s inner cities”, Amnesty International, 2008

7 Report of the Special Rapporteur, Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2003/53, 2003

8 “A New Era of Policing in Jamaica, JCF Strategic Review”, Ministry of National Security - 2008

killings, nearly a fifth of all murders committed that year.⁹ This practice is not just more widespread than ever, it appears now to be systematic as well.

18. These killings too often concern unarmed young men or boys from lower socio-economic strata who pose no threat to police. Police impunity has been the rule: in the last ten years, there has been only one conviction of a police officer for murder, in 2006.
19. Well documented problems of investigative inadequacies and lack of independence, severe problems in the functioning of the justice system, including a lack of professionalism and training of judges and inadequate support for the administration of justice, lead to a pattern of impunity for police officers suspected of committing extra-judicial killings of civilians.

➤ **Lack of Investigation of Police Abuse**

20. The failure to ensure effective, independent and timely investigations whenever police discharge a firearm or when police action results in serious injury or death, constitutes an abuse of power and an important cause of impunity in itself. Almost all investigations and prosecutions of fatal police shootings are perfunctory, inadequate, unsatisfactory and do not meet international standards.¹⁰
21. The failure of the system to either credibly clear or convict police of acting unlawfully leads to significant distrust of the police within communities and the formal justice systems. This in turn leads to alienation of communities from the police and increases the difficulty of controlling crime.

RECOMMENDATIONS

22. The police should use firearms only as a last resort in situations where there is an imminent threat of death or serious injury and only when less extreme means are insufficient.
23. Jamaica must promote greater accountability for failure by police officers to comply with domestic professional standards of conduct, many of which already conform to international norms.
24. Jamaica must ensure diligent criminal investigation, prosecution, and punishment of police perpetrators in those cases where unlawful use of force and firearms results in the killing of civilians.
25. There should exist an adequate procedure to review the decision of the Director of Public Prosecution regarding the prosecution of police officers for unlawful killings.
26. Governments should assist the Jamaican government in the immediate implementation of a programme to reduce and prevent homicides and police killings in inner-cities and the excessive use of force by the Jamaica Constabulary Force.

9 “Killing Impunity : Fatal Police Shootings And Extrajudicial Executions In Jamaica”, 2005-2007, Jamaicans For Justice And The George Washington University Law School (Washington, D.C.) March 18, 2008

10 “Pattern Of Impunity”, Jamaicans For Justice, 2006

Administration of justice

➤ General Court System

27. The present judicial system, in its entirety, fails to deliver timely and fair justice for all. The court system is slow and suffers from a chronic lack of resources. Cases may take years to make it way through all the stages of jurisdiction to completion. Other negative factors have to do with the lack of political and judicial, will and the lack of management skills, to effect comprehensive reform of the justice system, leading to a distrust of the formal justice systems within communities and civil society.
28. *The Jamaican Justice System Reform*¹¹ initiative has laudable goals which Jamaicans for Justice (JFJ) supports: a modern justice system that is efficient, accessible, accountable, fair and able to deliver timely results in a cost-effective manner. Nonetheless, there have been many excellent studies and proposed reforms that came before this initiative and they have, inevitably, failed to be implemented.¹²
29. One particular preoccupation is the detention process and access to legal aid: unjustifiably prolonged detention before charging or release of suspects, detention involving abuse, shortage of attorneys (duty counsel and legal aid) available to suspects, reluctance of police officers in considering or granting bail.

➤ Coroner's Court

30. The Coroner's Court is not only plagued by a serious lack of financial and human resources and an unacceptable backlog of cases, but delays are overwhelming, leading to a violation of the right to judicial remedy. The resulting backlog of cases and miscarriages of justice become, in many cases, abuses of fundamental human rights and must be addressed to arrest the endemic trend of inefficiency and curtail impunity towards the police sector.
31. Among the inadequacies noted by Jamaicans for Justice:
 - a. Inadequate frequency of Coroner's Court sessions and excess of adjournments
 - b. Inadequate number of magistrates, clerks and support staff
 - c. Inadequate use of technology
 - d. Problems with witnesses: inadequate system of subpoenaing witnesses, reoccurring absences of witnesses
 - e. Inadequate system of subpoenaing jurors
 - f. Poor communication with families of the deceased
 - g. Lack of public knowledge of the processes of the justice system
 - h. Legal aid not available for families

RECOMMENDATIONS

32. The Government of Jamaica should move expeditiously to ensure the implementation of the recommendations of the *The Jamaican Justice System Reform Task Force Report*, with particular emphasis on ensuring the provision of adequate resources and independent administrative structures for the justice system.

¹¹ ib., supra note 3

¹² "For Want of a Nail", Jamaicans for Justice, 2007

3.33. The Government of Jamaica should move urgently to reform the processes of the Coroner's Court and reform provisions regarding jury selection

34. Jamaicans for Justice believes that the problems regarding detention and lack of legal aid in the Jamaican justice system can be solved with improved administrative practices, enforcement of professional behaviour and increased resources, especially in regard to duty Counsel and legal aid.

➤ **Detention conditions**

35. There exists a problem of inhumane living conditions and overcrowding in prisons and police holding cells.¹³

RECOMMENDATIONS

36. Serious attention needs to be given to strengthening the constitutional protections against arbitrary and prolonged detention in inhumane conditions.

37. There should be a serious focus on the provision of rehabilitation programmes.

38. Commitments made by the Government of Jamaica to build proper detention facilities should be kept.

39. There should be a categorization of the inmates according to the type of crime they have committed with separation of different categories of detainees and the application of specific programmes as appropriate.

Vulnerable persons

➤ **Youth and children's rights**

40. The organizations providing this report contend that the Government of Jamaica is in gross violation of its obligations to respect and ensure the rights of children who are in the custody of the Jamaican State, not only according to its own legislation but also in respect to international human rights. These gross violations have been documented over many years in a variety of different reports.^{14 15 16}

41. These abuses became tragically acute in May 2009 with the deaths of seven (7) girls who perished in a fire at a juvenile correctional facility, ARMADALE.¹⁷

42. Conditions of detention of juveniles in police holding cells and detention centers fail to comply with international standards. Juveniles are held in overcrowded centers and are mixed with adults. The facilities lack activities for the children.

43. Juveniles who are in need of care and protection and those accused or convicted of serious crimes are held together in the same facilities. This is in direct contravention to national laws.

44. Although the Jamaican state has instituted an Office of the Children's Advocate, it is under-staffed, under-resourced and appears to be unable to hold the government of

¹³ Preliminary observations, Visit to Jamaica, IACHR, 2008

¹⁴ Report on The Situation of Children in The Care of The Jamaican State, Jamaicans for Justice, 2006

¹⁵ Report to the IACHR Special Rapporteur on the Rights of the Child, Jamaicans for Justice, 2002

¹⁶ Response to the Government of Jamaica Presentation to IACHR on Children in care of State, Jamaicans for Justice, 2010

¹⁷ Report on The Situation of Children in The Care of The Jamaican State, Jamaicans for Justice, 2009

Jamaica accountable. It fails to ensure that the Government complies with its national and international obligations.

RECOMMENDATIONS

45. The development by way of comprehensive assessment and periodic review of care plans for each and every child in care of the state
46. Separation of children in need of care and protection from those accused and or convicted of crimes.
47. Establishment of categories of homes for different categories of needs of the wards of the state.
48. Clear separation of monitoring responsibilities for homes and places of safety for child protection and care responsibilities.
49. A complaints policy and procedure for children must be put in place and the children in care must be made aware of it.
50. The office of the Children's Advocate must strengthen its efforts to ensure the Government protects the rights of all Jamaican children.

➤ Women's rights

51. Among the major issues facing women in Jamaica today are:^{18 19 20}
 - a. domestic violence, gender inequality, stereotyped roles for men and women
 - b. the slowness of legal reform relating to anti-discriminatory legislation
 - c. the high rate of teenage pregnancies
 - d. the lack of sexual harassment legislation
 - e. economic reliance by women on men, based on female poverty and women's lack of alternative sources of income.
 - f. institutional factors such as:
 - i. lack of organized institutional support for women
 - ii. an inefficient justice system
 - iii. religious teachings which continue to oppress women.

RECOMMENDATIONS

52. The Government must appoint a Minister with sole responsibility for Women's Affairs and appoint a broad-based National Commission on Women to advise the Minister
53. The Bureau of Women's Affairs needs a permanent Legal Advisor/Gender Specialist whose focus will be on CEDAW and state obligations to CEDAW.
54. The Government must:
 - a. furnish financial aid as well as policy and programme support for activities relating to gender equality and human rights.

18 Fifth periodic report of States parties, Jamaica, Committee on the Elimination of Discrimination against Women (CEDAW), 2004

19 "Jamaica and CEDAW. The NGO Perspective", Association of Women's Organizations in Jamaica, 2006

20 Women's Rights as Human Rights: Though A "Gendered Perspective", Association of Women's Organizations in Jamaica, 2010

- b. take concrete steps to increase women's gainful employment, thus reducing their vulnerability.
- c. immediately introduce a state-funded public education programme aimed at preventing rape and sexual crime and to provide victim support
- d. establish a network of shelters to provide for victims and persons threatened with crimes of sexual violence
- e. provide special education and employment outreach to rural women

➤ **Rights of homosexuals and gay persons**

- 55. Gay people in Jamaica, or those suspected of being gay, are routinely victims of ill-treatment and harassment by the populace and the police, and occasionally of torture.
- 56. Anti-sodomy laws have also resulted in AIDS awareness workers being detained and ill-treated on suspicion of promoting homosexual relations.²¹

Electoral system

- 57. Essentially unregulated, and in many cases illegal, financial flows determine political decision-making in a way that is neither transparent nor accountable to the public. This challenge is further exacerbated by poverty, unemployment, narco-trafficking and other organized criminal activity. There is no system for inspecting or auditing candidates' returns and expenditure limits are largely not enforced or disregarded. Parties are not required to indicate funding sources or amounts spent.²²

RECOMMENDATIONS

- 58. Campaign finance monitoring in Jamaica should focus primarily on expenditure, starting with three basic mechanisms:
 - a. Media advertisement expenditure: Cross checking data with spending limits and advertising market prices
 - b. Transparency Pacts for political parties.
 - c. The release of a candidate's and party income sources and expenditure for achieving greater transparency and accountability.
- 59. The establishment of a carefully designed system comprised of registered and regulated political parties, full disclosure, state financing of political parties, and contribution and/or spending limits.
- 60. Political Campaign Financing legislation should be developed and include mechanisms for extensive disclosure of contributions and the provision of audited accounts coupled with strong sanctions for breaches.

Health

²¹ *ib.*, supra note 5

²² Elector report, CAFFE, 2010

➤ **Mental health**

61. Non-public mental health facilities and organizations working for people with mental health problems are not funded and mostly ignored by the government. This leads to a situation where the progress of integration of mentally-ill people into the mainstream of Jamaican society is slow and painful. Social exclusion as a result leads to discrimination towards an innocent and vulnerable sector of Jamaican society

RECOMMENDATIONS

62. The Government, through the Community Mental Health Services and the Ministry of Labour and Social Security, should form working partnerships with NGOs to implement measures to improve the lives and mental health of patients.²³
63. Government should give tax incentives to employers that institute an Affirmative Action policy to hire mentally challenged persons and provide Government subventions to NGOs/CBOs to assist them in their efforts to provide services.
64. There should be set up:
- a. a National public education programme for sensitizing and preparing communities and specific sectors in the wider community to respond appropriately to persons with mental illnesses
 - b. Day rehabilitation centers, sheltered workshops, rehabilitation programmes
 - c. Education of police: develop training modules to be delivered at the police training academy for pre and in-service training of police officers

II. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

65. We can safely say that the achievements and best practices of the Jamaican government have been to seriously look at itself and examine its deficiencies in the areas of public security, human rights and children's rights, as these are the principal challenges it faces.
66. Therein lies the challenge: to go beyond analysis and to decisively implement the proposed solutions, to find the political courage and the financial resources to prioritize what must be contended with and to arrive at achievements worth of a dignified state.

III. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

67. The priorities have been clearly set out in this report:
- a. Public security and accountability of the police sectors
 - b. Non-discrimination of citizens in the exercise of their human rights with appropriate special protections for the most vulnerable in the society.
 - c. Adequate, modern and universal administration of justice at all levels
 - d. Full and adequate child protection by the state

²³ "In Search of Care: Experiences and Needs of the Mentally Ill", MENSANA, 2004