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**JAMAICANS  
FOR JUSTICE**

## **Access Now and Jamaicans for Justice**

# **Joint Submission to the United Nations Human Rights Council, on the Universal Periodic Review 2020 Third Cycle for Jamaica**

### **About Access Now and Jamaicans for Justice**

1. Access Now ([www.accessnow.org](http://www.accessnow.org)) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 14 countries around the world, including engagement with stakeholders and policymakers in Latin America, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. We engage with an action focused global community, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. Jamaicans for Justice (JFJ) is a non-governmental human rights and social justice organization. Founded in 1999, JFJ provides legal services in response to human rights violations, campaigns for social justice causes, conducts research on human rights and social justice, and works on legislation and policy. JFJ serves hundreds of Jamaicans each year and produces high-impact research and advocacy that shape the national agenda. More information about JFJ's work can be found at [www.jamaicansforjustice.org](http://www.jamaicansforjustice.org)

### **Introduction**

3. The Universal Periodic Review (UPR) is an important United Nations (U.N.) process aimed at addressing human rights issues all across the globe. Access Now and Jamaicans for Justice welcome this opportunity to contribute to Jamaica's third review cycle. This submission examines the following human rights priorities:
  - The right to privacy
  - Access to information and
  - Freedom of expression.
4. Jamaica was last reviewed in May 2015. Then, Jamaica received 170 recommendations in the area of human rights, of which 94 recommendations were accepted and 76 noted.
5. Since 2015, Jamaica has taken steps towards the establishment of identification and data management mechanisms. The government drafted and passed a National Identification and Registration Act which was ultimately struck down and has worked towards the completion of a Data Protection Act. Since the drafting of the Data Protection Bill in August 2017, there have been delays in enactment due to political divisiveness. Numerous civil society organizations with

a vested interest in the management and protection of data, including the Jamaica Computer Society, and private entities, such as Digicel, have submitted recommendations to parliament. When passed, the Data Protection Act should provide a framework for protection of users' data. As of 2019, there has been a concerted effort by the government to pass this bill, in response to the need for an additional data framework to facilitate the reintroduction of the recently struck down National Identification and Registration Act.

### **International and domestic human rights obligations**

6. Jamaica has signed onto and ratified various international human rights treaties which cover a myriad of human rights including: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms for Discrimination Against Women (CEDAW).
7. Chapter III of the Constitution of Jamaica – the Charter of Fundamental Rights and Freedoms (the Charter) – guarantees equal protection before the law. Of these, section 13(3)(c) establishes the right to freedom of expression. Section 13(3)(d) affirms: “the right to seek, receive, distribute or disseminate information, opinions and ideas through any media.” Section 13(3)(j)(ii) reiterates the right of all Jamaicans to: “respect for and protection of private and family life and privacy of the home” and is complemented by Section 13(3)(j)(iii) which provides “protection of privacy of other property and of communication.”<sup>1</sup>
8. Notably, the Charter stresses that these rights and freedoms are protected insofar as they do not prejudice the rights and freedoms of others and adds that they may only be limited where demonstrably justified in a free and democratic society and Parliament should pass no laws or organs which may abrogate, abridge or infringe these rights.<sup>2</sup>

### **The state of digital rights in Jamaica**

#### **The Right to Privacy**

9. In 2017, Jamaica established the National Identification System (NIDS) with the National Identification and Registrations Act (NIRA). NIDS is a centralized database of all Jamaican citizens. Each citizen, when registered with NIDS, is given a unique identifying number, also known as a digital ID. This digital ID and database are connected to, and contain, biometric data about individuals (*i.e.* biological traits that individuals can *never* change) are preserved as identifying information in this database. Not only did the NIRA establish this database, it also made it a criminal offense for any Jamaican to not register with NIDS. Therefore, mandating the sharing of biometric data from every citizen. This law violated the human rights of Jamaican

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<sup>1</sup> The Charter of Fundamental Rights and Freedoms (Constitutional Amendment Act, 2011).

<sup>2</sup> *Id.* Section 13(2).

individuals, threatening their right to privacy and increasing the possibility of dangerous data surveillance in the country.

10. In early 2019, the government was in the process of finalizing NIRA accompanying regulations which sought to operationalize NIRA by specifying how data was to be collected and stored and the information that the National Identification Card (NIC) would include.
11. Two years after the establishment of the NIDS in 2017, the Jamaican Constitutional Court unanimously ruled in April 2019 that NIRA's mandatory requirement of biometric identification were in violation of the Jamaican Constitution and infringed upon the right to privacy. They accordingly rendered NIRA void and struck down the law and dissolved NIDS in its entirety, noting that those aspects of NIRA which did not infringe on the Constitutional rights of citizens were not enough to stand alone. Access Now and Jamaicans for Justice commend this action by the Jamaican Supreme Court, as this 2019 ruling against Jamaica's Digital ID system sets a precedent of respecting the human rights – the privacy and liberty – of all Jamaicans.<sup>3</sup>
12. The government of Jamaica tabled a Data Protection Bill in October 2017 that supports the fundamental right of every Jamaican to have their privacy protected, and which seeks to set clear guidelines for how the Government, businesses and organisations should correctly collect, store and dispose of persons' personal and sensitive data.<sup>4</sup> The government is currently "moving rapidly" to complete the bill which it is believed will be crucial in the process of retableting an updated and constitutionally compliant NIRA.

### **Access to Information**

13. The internet is fundamental in ensuring access to information while providing a platform for expression, innovation and wealth creation. Mere access to the internet is not enough. Internet infrastructure, policy, and governance must be resilient enough to sustain against censorship, blocking, attacks and shutdowns.
14. In 2017, recorded internet penetration in Jamaica was approximately 56% (1.5 million), up from 1.1 million users in 2011. However, as of 2018, only 9.7 out of every 100 Jamaicans have fixed-line broadband subscriptions.<sup>5</sup> Additionally, there is a discrepancy in mobile and fixed line access with 1.6 million mobile internet users compared to 1.5 million for the latter.<sup>6</sup>
15. Jamaica has been flagged as possessing one of the most developed Digital Infrastructures in the Caribbean and accordingly boasts the highest rates of social media usage in the region as well. Among internet users in Jamaica, social media penetration was sizable with 64.83% of the

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<sup>3</sup> [Supreme Court declares Jamaica Digital ID unconstitutional](#), Digital Watch Observatory, 2019

<sup>4</sup> [Data Protection Bill Supports Fundamental Right of Every Jamaican](#), Ministry of Science, Energy & Technology, 2017; [Data Protection Bill to be Reviewed this Month](#) Jamaica Information Service, Serena Grant, 5 July 2019.

<sup>5</sup> [2018 Statistics](#), ITU, 2018.

<sup>6</sup> [Jamaica third largest Internet user base in the Caribbean](#), Jamaica Observer, 2018.

population being Facebook users. Though significantly less, other notable mentions are Instagram at 6.74% and Twitter at 4.64%.

16. Access to Information (ATI) is a right that not many Jamaican utilize. While Jamaica has established a legal framework for public access to government information in its Access to Information Act (2002), serious deficits plague the system. Jamaica's ATI Act creates the legal right to access government information and the government has taken steps to operationalise the ATI Act through the establishment of the Access to Information Unit, a government office mandated to further public access to information within the parameters of the ATI Act. Despite a 2008 Parliamentary Committee publishing its review and transmitted a suite of highly important reforms to the government for the drafting of revised legislation, to date, those reforms have not been acted upon.
17. We note with concern that on October 1, 2019 the Jamaican government attempted to pass a Resolution which would extend the period for which Cabinet documents were exempt from being requested under the ATI Act, from twenty years to seventy years.<sup>7</sup> This is a testament to the challenges faced in Jamaica's framework for freedom of information and has raised significant questions about the accessibility of information and the credibility of the ATI Act, which was enacted to promote transparency and to encourage governmental accountability.

### **Freedom of Expression**

18. In March 2017, Latoya Nugent, an activist, was arrested after she publicly named alleged perpetrators of sexual violence on social media. Nugent was subsequently charged under Section 9(1) of Jamaica's Cybercrime Act for "use of a computer for malicious communication" which it is alleged was menacing in nature and subsequently caused annoyance, distress and harm.<sup>8</sup> Nugent is part of a new movement of women and sexual violence survivors called the Tambourine Army. This group has turned to the internet to campaign against gender-based violence, talk openly about their experiences and to tackle issues around the silencing of survivors.
19. Though all charges were dropped, because the utterances were deemed by the Jamaican Director of Public Prosecutions to not be obscene, threatening or menacing in accordance with the act, this case represents the threats to freedom of expression that arise from the Cybercrime law.<sup>9</sup> Additionally, despite the criminal charges being dropped, the Supreme Court of Jamaica has entered a default judgment against Nugent and awarded \$16 million to one of the men

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<sup>7</sup> *The Access to Information (Cabinet Documents) (Extension of Exemption Period) Order, 2019.*

<sup>8</sup> [Jamaican Activist Arrested Under Cybercrime Law Amid Her Campaign Against Sexual Violence](#), GlobalVoices, 2017.

<sup>9</sup> [Media Release Regina v Latoya Nugent for Breaches of the Cybercrimes Act](#) Office of the Director of Public Prosecutions, 12 May 2017.

accused of sexual violence who filed a defamation suit against Nugent.<sup>10</sup> An appeal process is currently underway.

## Recommendations

Jamaica should improve its human rights record and treatment of digital rights in several areas. We accordingly recommend that the Jamaican government:

20. Should take steps to ensure that affordable internet access is made available across the island to ensure that rural citizens will be able to readily access information and services through various public and private entities;
21. Jamaica should clarify definitions in its Cybercrime Act, particularly section 9(1), regarding “malicious” and “unlawful” communication because the legislation, as it stands, is susceptible to broad interpretation and application resulting in human rights violations;
22. Jamaica should work in cooperation with civil society to ensure that their Data Protection Bill provides robust protection to its citizens and is in alignment with human rights principles;
23. The National Identification and Registration Act and accompanying regulations should be compliant with the Constitution and should include safeguards for the collection and storage of sensitive data;
24. The Access to Information Act must be reviewed and amended in accordance with the stipulations of the Act and the government must ensure that any amendments to the Act do not frustrate its object and purpose.
25. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now and Jamaicans for Justice are grateful to make this submission.
26. For additional information, please contact Access Now General Counsel Peter Micek ([peter@accessnow.org](mailto:peter@accessnow.org)).
27. For additional information, please contact Monique Long, Human Rights Attorney & Policy and Advocacy Manager, Jamaicans for Justice ([monique.long@jamaicansforjustice.org](mailto:monique.long@jamaicansforjustice.org))

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<sup>10</sup> [Supreme Court Awards \\$16M In Defamation Award Against Gender Activist Latoya Nugent](#) The Gleaner, 31 January 2019.