

CHAPTER V

FOLLOW-UP OF RECOMMENDATIONS ISSUED BY THE IACHR IN ITS COUNTRY OR THEMATIC REPORTS

REPORT ON THE SITUATION OF HUMAN RIGHTS IN JAMAICA¹

I. INTRODUCTION

1. The purpose of this report is to follow up on the recommendations made by the Inter-American Commission on Human Rights (“IACHR” or “the Inter-American Commission”) in its Report on the Situation of Human Rights in Jamaica (also “2012 Report”) of August 10, 2012.

2. Since the 2012 Report was published, the IACHR has continued to closely monitor the human rights situation in Jamaica and has undertaken to follow-up with the Jamaican government and civil society organizations on the progress being made on its recommendations. At its own initiative, the IACHR scheduled a public hearing concerning the situation of human rights in Jamaica which took place on March 27, 2014, during the 150th Regular Period of Sessions. A subsequent follow-up hearing was convoked and took place on October 28, 2014 during the 153rd Regular Period of Sessions. Both hearings have assisted the IACHR in its monitoring function.

3. The State has made some notable efforts to address human rights in Jamaica. Currently, the government is actively pursuing the establishment of a national human rights institution, in accordance with the Paris Principles for the Promotion and Protection of Human Rights. Initial consultations with a view to potentially establishing a hybrid national human rights institute were held between the Jamaican government and the Commonwealth Secretariat in July 2014. A concept paper was developed in order to mark the way forward. Further consultations with relevant stakeholders will be held in the near future, and there have been ongoing internal consultations within the government.²

4. The IACHR commends the State for reforms in certain key areas. The Inter-American Commission recognizes the steps taken to address citizen security and the administration of justice, particularly as they relate to its attempts to combat impunity through the Independent Commission of Investigations (“INDECOM”). In addition, the IACHR commends the State for abolishing the offence of criminal defamation through the passage of the Defamation Bill. The IACHR was pleased to receive information that the State has implemented legislative frameworks and public policies that will better ensure that the rights of women and persons with disabilities are upheld and respected. Further, the State has amended its Trafficking

¹ In accordance with the provisions of Article 17.2 of the Rules of Procedure of the Inter-American Commission, Commissioner Tracy Robinson, of Jamaican nationality, did not participate in the debate or decision of the present report. Also in accordance with Article 17.2, Commissioner Rose-Marie Antoine excused herself from participating in the debate or decision of this report.

² IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014; IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

in Persons Amendment Act 2013 in order to give further force to the protection of persons who are vulnerable to trafficking.³

5. Despite positive advances, the IACHR has observed deficits and pending challenges in the implementation of the recommendations made to the State in the 2012 Report. The Inter-American Commission continues to closely follow issues of citizen security, violence at the hands of members of the security forces, and the measures in place to provide accountability. The IACHR remains concerned about allegations of threats of prosecution against members of civil society organizations in relation to their work defending human rights, the recent retrofitting of police lock-ups and temporary holding facilities to house juveniles, and the continued acts of violence and discrimination toward vulnerable groups, including LGBTI persons and persons living with (or affected by) HIV.

6. The present update reviews the issues of citizen security and human rights, administration of justice, rights of persons deprived of liberty, rights of women, rights of children, discrimination based on sexual orientation and gender identity, rights of persons with disabilities, and the right to freedom of thought and expression. Each section indicates the implementation status of the recommendations, in whole or in part; consideration is given to measures adopted by the State and, where relevant, the results of those measures and present challenges.

7. In preparing this report, the Inter-American Commission has taken into account information provided by the State and organizations of civil society, as well as that available through other intergovernmental agencies, the press, academia and other publically available sources. The Inter-American Commission reiterates its desire to continue to support the efforts of the State to implement measures of law, policy and practice to strengthen the protection of human rights in Jamaica.

II. DRAFT REPORT AND RESPONSE OF JAMAICA

8. The IACHR discussed and approved a draft version of this report on January 30, 2015. Pursuant to Article 60(a) of its Rules of Procedure, the report was sent to Jamaica on February 2, 2015 with a request that it submit its observations within a one month time period. The State submitted its response on February 27, 2015.

9. The IACHR appreciates the response from the State and the positive engagement with the inter-American system of human rights. The Inter-American Commission welcomes information as to the reduction in serious and violent crime, as well as the State's intention to pay greater attention to improving the conditions in detention facilities. However, the IACHR wishes to reiterate that the State address other areas of great importance. These include, among others, adherence to lawful arrest and detention practices, in addition to continued vigor in the fight against police impunity.

10. In its response, the State reiterated its commitment to improving the human rights of all its citizens, as evidenced by various initiatives, policy directives, and the legislative agenda both in terms of the bills drafted and the Acts passed since the IACHR's last report.

³ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014; IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

III. CITIZEN SECURITY AND HUMAN RIGHTS

11. In the 2012 Report the IACHR made the following recommendations on citizen security and human rights to the Jamaican State:

- a. Design and implement comprehensive public policies on citizen security, and develop the institutional capacity within the public sector, as well as the adequate human, technical, and economic resources to carry them out effectively. This includes improving the selection and training process for the personnel of the relevant institutions, such as the police, the members of the judicial branch, the Department of Public Prosecutions and the prison system.
- b. Establish and implement accountability systems and procedures that apply to all authorities with a role in implementing citizen security, with internal and external control mechanisms, in order to strengthen the institutions of democratic government and foster transparency in the exercise of public office.
- c. Take all measures to combat impunity, including the reform of domestic laws, administrative regulations, procedures and plans of operation of the institutions with jurisdiction over citizen security policies, to ensure that such institutions are able to prevent, investigate and punish any human rights violation resulting from acts of violence or crime, or from the action or omission of State agents.
- d. Carry out full, impartial and effective investigations into all cases of violent death and injuries, especially where the security forces are involved, such as those that took place in the last week of May 2010 in West Kingston, in order to prosecute and punish those responsible and ensure reparation to the victims or their families.
- e. Adhere strictly to the provisions of Article 27 of the American Convention whenever the authorities decide to apply a suspension of guarantees under a declared state of emergency, including an immediate report to the other State parties to that international instrument, with respect to the measures suspended, the respective reasons, and duration.
- f. Adopt administrative, legislative or other measures necessary to allow for rapid and proper care to victims of violence and crime, and to ensure the special standards of protection needed for particularly vulnerable persons or groups such as children and adolescents, women, and migrants and their families.
- g. Ensure that the Jamaica Constabulary Force and all security bodies act with due diligence to prevent, deter, and lawfully suppress acts of violence or crime as part of the State's obligation to protect and guarantee the enjoyment of human rights.
- h. Modernize and professionalize the police force with measures that include:
 - i. bringing its institutional philosophy into conformity with international human rights standards and principles related to citizen security;
 - ii. objective procedures for recruiting and selecting its personnel;
 - iii. implementing programs geared to professionalizing the security forces, with a framework of clear and precise rules and regulations; and
 - iv. developing skills in police intelligence work, with a legal framework that conforms to international standards on human rights to assist in preventing violence and crime, especially in the case of organized crime.

- i. Adopt laws and measures to clearly define and distinguish national defense as the function of the armed forces, and citizen security as a function of the police.

A. Background

12. Widespread violence is still characteristic of Jamaica. The 2013 calendar ended with 1,197 murders (versus 1,099 recorded in 2012) giving an increase of nine percent.⁴ The increase in murders in the latter half of 2013 was attributed to three factors, notably: the release of certain gang leaders from incarceration; an increase in the number of murders in the course of robberies; and an increase of drug and firearm trafficking.⁵ It was reported that crime was down in other categories such as shooting (1 percent), rape (16 percent), and aggravated assault (14 percent).⁶

13. According to the 2013 United Nations Office on Drugs and Crime (“UNODC”), Jamaica had the sixth highest homicide rate globally (39.3 per 100,000 in 2012), a level that comes in at almost twice the regional average.⁷ UNODC’s 2013 Report also stated that “[in] contrast to the regional average [in the Americas], the 30-44 age group in Central America and the Caribbean is at a higher risk of homicide than other age groups.”⁸ In Jamaica (as well as in El Salvador and Honduras) “the male homicide rate in the 30-44 age group is higher than in the 15-29 age group and while the number of victims is greater in the 15-29 male age group, the rate indicates that the homicide risk for males aged 30-44 is higher.”⁹

14. The State faces a particular challenge arising from deportations, particularly those from the United States (“U.S.”). Information from the Jamaican government indicates that each month up to 100 persons are deported to Jamaica from the U.S. due to having been found guilty of criminal activity or having violated the U.S. immigration laws.¹⁰ The Jamaican authorities indicate that many of these deportees have no significant link to this country, and that some of them engage in criminal activities upon their return, all of which adds to the difficulty faced by the State in dealing with crime.¹¹

15. Jamaica acknowledges that the country’s high rate of crime and violence negatively affects its human rights situation, particularly in the case of persons in situations of vulnerability. However, the State informed that concrete steps are being taken to address the issue within the resource constraints facing the

⁴ Ministry of National Security, “National Security Minister’s Statement on Crime in 2013” (Jan. 24, 2014), available at: <http://jis.gov.jm/national-security-ministers-statement-crime-2013/>

⁵ Ministry of National Security, “National Security Minister’s Statement on Crime in 2013” (Jan. 24, 2014), available at: <http://jis.gov.jm/national-security-ministers-statement-crime-2013/>

⁶ Ministry of National Security, “National Security Minister’s Statement on Crime in 2013” (Jan. 24, 2014), available at: <http://jis.gov.jm/national-security-ministers-statement-crime-2013/>

⁷ United Nations Office on Drugs and Crime, “Global Study on Homicide 2013”, United Nations, March 2014, at 85, available at https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf ; Bunting, Peter (Minister of National Security), “Sectoral Debate 2014: Working Together to Build a Safer Jamaica”, May 13, 2014, at 2, available at: https://www.mns.gov.jm/sites/default/files/documents/files/MNS%20Sectoral%20Presentation%202014_0.pdf

⁸ United Nations Office on Drugs and Crime, “Global Study on Homicide 2013”, United Nations, March 2014, at 30, available at https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf. As noted in the report, “the impact of this dynamic can be devastating for security and the economy, as the deaths of males in the older of the two age groups can have a disproportionate impact on families, the working population and perceptions of security.”

⁹ United Nations Office on Drugs and Crime, “Global Study on Homicide 2013”, United Nations, March 2014, at 30, available at https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf. As noted in the report, “the impact of this dynamic can be devastating for security and the economy, as the deaths of males in the older of the two age groups can have a disproportionate impact on families, the working population and perceptions of security.”

¹⁰ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

¹¹ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

government.¹² The State also reported on steps to modernize its national security and law enforcement infrastructure, and to put in place the necessary legislation, with a view to addressing the root causes of violent crime in society.¹³

16. Civil society organizations remain concerned by the high levels of violence that Jamaicans face daily.¹⁴ Civil society organizations have noted that the sense of security is greatest where the level of confidence in the institutions of law enforcement and justice is high.¹⁵ The high level of violence in Jamaica causes citizens great concern, and undermines the confidence in the State's capacity to protect the citizenry.¹⁶ Civil society organizations have identified that there is unequal access to measures of security and protection for vulnerable populations.¹⁷

17. On January 27, 2015 Minister of National Security Peter Bunting, delivered a statement on crime statistics for 2014. Mr Bunting stated that there was 16% overall reduction in serious and violent crime in 2014.¹⁸ murder rates reduced 16%, shooting 12%, rape 23%, and aggravated assault 17%. Acquisitory crimes were down by more than 10%.¹⁹

B Comprehensive public policies

1. Jamaica Constabulary Force (JCF) policies

18. The State has taken measures to design and implement comprehensive policies on citizen security. The Jamaica Constabulary Force ("JCF") launched a "violence interruption strategy" called 'Operation Resilience' at the beginning of October 2013 under which it conducted 346 anti-gang operations.²⁰ According to information from the State, as a result of Operation Resilience, 361 arrests were made and 201 firearms were recovered.²¹ November 2013 saw a moderation in crime.

19. In an effort to address national violence the State developed the 'Unite for Change' initiative that was launched on December 5, 2013.²² The 'Unite for Change' initiative sought to coordinate a multi-

¹² IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹³ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁵ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁶ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁷ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁸ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 6.

¹⁹ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 6.

²⁰ Ministry of National Security, "National Security Minister's Statement on Crime in 2013" (Jan. 24, 2014), available at: <http://jis.gov.jm/national-security-ministers-statement-crime-2013/>.

²¹ Ministry of National Security, "National Security Minister's Statement on Crime in 2013" (Jan. 24, 2014), available at: <http://jis.gov.jm/national-security-ministers-statement-crime-2013/>.

²² Ministry of National Security, "Minister Peter Bunting Launches 'Unite For Change' As New Island Crime Fighting Movement" (undated), available at: <http://www.mns.gov.jm/press-release/public-advisory-cabinet-sub-committee-review-detention-system>

sectoral response involving the state (government ministries, departments and agencies), private sector, community and faith-based organizations, NGO's and civil society.²³

20. In its response to the draft version of the present report, the State indicated that in an effort to modernize and improve the police force, Jamaica has merged the Island Special Constabulary Force with the JCF, thereby eliminating administrative duplication and increasing the number of police personnel available for operational duties.²⁴

21. The State mentions that, as noted by the Inter-American Commission in its report, there has been greater focus on community policing, intelligence gathering and programs such as 'Unite for Change'.²⁵ These methods, which along with more speedy operational responses, general reorganization of the force, as well as other strategies, have led to the overall reduction in serious and violence crime in the year 2014.²⁶

2. Community policing

22. In 2014, the Jamaican Government pledged to strengthen its crime prevention strategies and reduce youth and gang-related violence by focusing on community policing and other measures outlined in the National Crime Prevention and Community Safety Strategy ("NCPCSS").²⁷ The NCPCSS was approved by Cabinet in October 2013 and it is a long-term safety plan that will be rolled out over a ten year period.²⁸ The NCPCSS prioritizes social inclusion, participation in community activities, individual action, governance, and knowledge-based policing.²⁹ As part of the NCPCSS, a National Youth Violence Forum (a component of the Unite for Change initiative) was also launched on January 30, 2014.³⁰

23. Two major funding initiatives contributed to the State's efforts in implementing comprehensive policies on citizen security. The first relates to the United States Agency for International Development's ("USAID") launching Phase Two of its Community Empowerment and Transformation Project ("COMET II") in January 2014 which will run for five years and assist the State in strengthening its citizenship, security and community-police relationships.³¹ The objectives of COMET II include enhancing relationships and building confidence among key stakeholders (police, community groups and key governmental

²³ Ministry of National Security, "National Security Minister's Statement on Crime in 2013" (Jan. 24, 2014), available at: <http://jis.gov.jm/national-security-ministers-statement-crime-2013/>

²⁴ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 7.

²⁵ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 8.

²⁶ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 8.

²⁷ Jamaica Observer. "Governments says more focus on crime control next year," December 22, 2013, available at: http://www.jamaicaobserver.com/news/Government-says-more-focus-on-crime-control-next-year_15676503; Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at page 1.

²⁸ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014; IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014; Ministry of National Security, "National Crime Prevention and Community Safety Strategy (NCPCSS)," (undated), available at: <https://www.mns.gov.jm/document/national-crime-prevention-and-community-safety-strategy-ncpcss>

²⁹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

³⁰ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.; Jamaica Observer, "Gov't hosting prevention forum Thursday," January 28, 2014, available at: http://www.jamaicaobserver.com/news/Gov-t-hosting-violence-prevention-forum-Thursday_15897070; Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at page 1; IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

³¹ Jamaica Observer, "USAID rolls out phase 2 of citizen security project," January 16, 2014, available at: http://www.jamaicaobserver.com/news/USAID-rolls-out-phase-2-of-citizen-security-project_15788972

institutions) and supporting the JCF's Community Based Policing Programme.³² Overall, it will seek to address the underlying causes of crime and promote improved communications and interactions between the citizens and the police.³³

24. The second project that addressed citizen security was implemented in June 2014 through the Inter-American Development Bank's ("IDB") approval of a US\$20 million loan to Jamaica in order to facilitate the Citizen Security and Justice Program III. The loan will in turn support the overall mechanism that is the Citizen Security and Justice Programme under the Ministry of National Security. Its focus is on individual and community risk factors in urban and marginalized areas, and addresses problems such as the use and tolerance of violence as a way to exert control and resolve disputes.³⁴

25. The IACHR notes that the Planning Institute of Jamaica ("PIOJ") has reported an 8.2 percent decrease in the murder rate for the period January to June 2014.³⁵ The Inter-American Commission is pleased with the noted reduction in murders and would welcome statistics on other areas of crime. The Inter-American Commission looks forward to further updates from the State in order to monitor the effectiveness of these policies in addressing citizen security.

3. Anti-Gang legislation

26. The government passed the Criminal Justice (Suppression of Criminal Organizations) Act in April 2014 ("anti-gang Act") which aims at addressing the problem of gangs, garrisons and organized criminal activity.³⁶ The State contends that the Act will "provide an important tool to the State in dismantling and addressing the root causes of violent crime."³⁷ The anti-gang Act provides a broad definition of criminal organization to include "any gang, group, alliance, network, combination or other arrangement among three or more persons."³⁸

27. The anti-gang Act criminalizes, among other things, the leadership, management, or direction of a criminal organization; the provision of a benefit or obtaining of a benefit from a criminal organization; aiding or abetting a criminal organization; and the recruitment of persons to be part of a criminal gang in an effort to dismantle organizations of the State.³⁹ Section 4 of the anti-gang Act specifically deems it a criminal offence to recruit children (defined in the Act as those under 18 years old) to participate in a criminal organization.

³² Jamaica Observer, "USAID rolls out phase 2 of citizen security project," January 16, 2014, available at: http://www.jamaicaobserver.com/news/USAID-rolls-out-phase-2-of-citizen-security-project_15788972

³³ Jamaica Observer, "USAID rolls out phase 2 of citizen security project," January 16, 2014, available at: http://www.jamaicaobserver.com/news/USAID-rolls-out-phase-2-of-citizen-security-project_15788972

³⁴ Inter-American Development Bank Press Release, "IDB to support community programs in Jamaica to reduce crime" June 25, 2014, available at: <http://www.iadb.org/en/news/news-releases/2014-06-25/jamaica-citizen-security%2c10851.html>

³⁵ McIntosh, Douglas, "Murder Rate Down January To June", August 21, 2014, available at: <http://jis.gov.jm/murder-rate-january-june/>

³⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

³⁷ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 1.

³⁸ A criminal organization is defined in section 2 of the Criminal Justice (Suppression of Criminal Organizations) Act 2013, available at: [http://www.japarliament.gov.jm/attachments/339_339.The%20Criminal%20Justice%20\(Suppression%20of%20Criminal%20Organizations\)%20Act%202013.pdf](http://www.japarliament.gov.jm/attachments/339_339.The%20Criminal%20Justice%20(Suppression%20of%20Criminal%20Organizations)%20Act%202013.pdf)

³⁹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

28. In the course of the March 2014 hearing, civil society organizations expressed concern that the anti-gang Act could be used by security forces as a repressive tool or paramilitary regime, impact negatively on youth, and disregard the presumption of innocence of persons who are found to be in contravention of the Act by police.⁴⁰ Additionally, civil society organizations were also concerned that the proposed anti-gang law establishes suspicion of belonging to a gang⁴¹ as an offence, which removes the evidentiary burden of proof from the State.⁴² Civil society organizations are also worried that the broad definition of a criminal organization⁴³ has a high probability to target youth who socialize together for their own protection, growth and development.⁴⁴

29. The IACHR is concerned about the potential for lack of due process guarantees in the anti-gang Act in relation to the balance between determining who is deemed a gang member on one hand and the presumption of innocence on the other.⁴⁵ The IACHR reiterates its view in the context of addressing gang violence, which is that public policies on citizen security should have the purpose of establishing or consolidating a national institutional framework that provides effective and efficient responses to the demands of a democratic society.⁴⁶

30. In responding to these concerns, the State reiterated that the anti-gang Act addresses only membership and participation in criminal organizations.⁴⁷ The State contends that the anti-gang Act does not seek to undermine the freedom of assembly in lawful organizations. In that respect, the State highlighted that the definition of criminal organization no longer includes 'corner crews' and the anti-gang legislation as passed into law does not include an offence of suspicion of belonging to a gang.⁴⁸ The State emphasized that the anti-gang Act will not deprive persons of their right to contest the designation of their organization as a criminal organization, as the courts will be an available remedy for a judgment on that matter.⁴⁹ In short, the State asserts that assembly rights are guaranteed, notwithstanding the effort to dismantle criminal gangs.⁵⁰

⁴⁰ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴¹ In the revised draft of this legislation, reference to suspicion of being involved in a gang is omitted. See: http://www.japarliament.gov.jm/attachments/341_The%20Disruption%20and%20Suppression%20of%20criminal%20organizations.pdf

⁴² IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴³ The Jamaican Civil Society Coalition expressed concern that the revised anti-gang bill had strengthened the definition of criminal organizations to include 'corner crews' that the police call street gangs. However, a reference to 'corner crews' is not in the anti-gang legislation passed in April 2014. See: http://www.japarliament.gov.jm/attachments/341_The%20Disruption%20and%20Suppression%20of%20criminal%20organizations.pdf

⁴⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁵ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁶ IACHR, Press Release No. 56/14, "IACHR Expresses Concern over Violent Deaths of Children, Adolescents, and Youths in a Context of Citizen Insecurity in Honduras", May 14, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/056.asp

⁴⁷ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁴⁸ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 10.

⁴⁹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁵⁰ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

31. In its response to the draft version of the present report, the State reiterated with respect to the anti-gang Act, that the legislation is geared at criminalizing recruiting for, belonging to, or receiving proceeds earned through the activities of criminal organizations.⁵¹ The State mentions that the crimes created in the anti-gang Act are specific ones.⁵² Additionally, the State emphasizes that the usual protection afforded to all citizens against arbitrary arrest and abuses by security forces still apply.⁵³ Therefore, recourse to the Courts, be it Constitutional or otherwise, is available to all citizens whose rights have been, are being, or are likely to be contravened by State actors, including the security forces.⁵⁴

C. Killings at the hands of security forces

32. Extrajudicial killings, the use of excessive force, and the lethal use of firearms by State actors are continuing occurrences in Jamaica. In 2013, Jamaicans for Justice (“JFJ”) reported that 258 persons lost their lives at the hands of agents of the Jamaican State, an almost 18% increase over the 219 persons who were killed by the security forces in 2012.⁵⁵ Of the 258 persons who were killed, the manner in which those persons died included shooting and stabbing.⁵⁶ In January 2014, there were 22 deaths at the hands of security forces.⁵⁷

33. According to JFJ, in 2014, there had been reports from ex-policemen alleging that there was a killing squad inside the JCF that planned killings, planted evidence, and altered records.⁵⁸ In April 2014, the Independent Commission of Investigations (“INDECOM”) announced that it had been investigating allegations into a so-called “death-squad” probe in which officers from Area Three (Clarendon, Manchester, and St Elizabeth) had been arrested for two murders that had been reported as homicides by civilians.⁵⁹ There were allegations relating to instances of senior officers in the JCF ordering the “cold-blooded killing of persons.”⁶⁰ INDECOM reported a cover-up in which it found that nine deaths reported as homicides at the hands of civilians were actually more than likely police killings that were purposely reported as civilian homicides in

⁵¹ Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 11.

⁵² Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 11.

⁵³ Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 11.

⁵⁴ Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 11.

⁵⁵ INDECOM’S Statistics on Security Forces Related Fatalities – 2013 <http://www.indecom.gov.jm/2013%20Statistics%20Press%20Release.pdf> in Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012) at para 16, March 2014, available at: [http://jamaicansforjustice.org/download/human_rights_jamaica/JFJ%20-%20IACHR%20Country%20Report%20Update%20March%202014%20\(1\).pdf](http://jamaicansforjustice.org/download/human_rights_jamaica/JFJ%20-%20IACHR%20Country%20Report%20Update%20March%202014%20(1).pdf)

⁵⁶ INDECOM’S Statistics on Security Forces Related Fatalities – 2013 <http://www.indecom.gov.jm/2013%20Statistics%20Press%20Release.pdf> in Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012) at para 16, March 2014, available at: [http://jamaicansforjustice.org/download/human_rights_jamaica/JFJ%20-%20IACHR%20Country%20Report%20Update%20March%202014%20\(1\).pdf](http://jamaicansforjustice.org/download/human_rights_jamaica/JFJ%20-%20IACHR%20Country%20Report%20Update%20March%202014%20(1).pdf)

⁵⁷ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁵⁸ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁵⁹ Jamaica Observer, “Police unaware of death squad probe but willing to cooperate,” April 3, 2014, available at: http://www.jamaicaobserver.com/news/Police-unaware-of-death-squad-probe-but-willing-to-cooperate_16397601

⁶⁰ Jamaican Gleaner, “Death Squads,” January 19, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140119/lead/lead1.html>; IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

order for the police to cover their tracks. INDECOM reported that its investigations into the “death squad” were being conducted with the full support of the JCF.⁶¹

D. Measures to combat impunity and to conduct proper investigations into violent deaths and injuries at the hands of security forces

1. Recent measures to combat impunity

34. The State reports that establishing and implementing accountability systems and procedures with internal and external control mechanisms that apply to all authorities with a role in implementing citizen security remains a priority. The Minister of National Security, Peter Bunting, made a declaration in Parliament in July 2014 that some of the State’s international partners withdrew their support to certain units within the JCF over concerns about extrajudicial killings by members of security forces.⁶²

35. Civil society organizations have noted that summary executions and corruption are still major issues plaguing the Jamaica police force.⁶³ Since the 2012 Report, there remain obstacles to accountability and the persistence of impunity is noted in the low number of police shooting cases that make it to the criminal court.⁶⁴ JFJ identified that setbacks and challenges still arise as illustrated in instances where police officers still delay informing INDECOM of fatal shootings which allows officers to remove or interfere with vital forensic and ballistic evidence. JFJ has stated that JCF officers collude on statements before presenting them and police officers still give the orders for post-mortems and examinations of ID parades which create serious conflicts of interest for INDECOM’s investigations.

2. Investigations into violent deaths and injuries: Tivoli Gardens Commission of Enquiry

36. One of the State’s recent manifestations of violent deaths and injuries at the hands of security forces was seen in the Tivoli Gardens incursion. As the IACHR recalled in its 2012 Report, the Tivoli Gardens incursion involved a joint military/police operation which started in Tivoli Gardens in May 2010.⁶⁵ The operation primarily aimed at executing a warrant issued by the Courts for the arrest of Michael Christopher “Dudus” Coke. Information received by the IACHR indicated that violent armed clashes involving police and security forces resulted in some 73 persons killed during the emergency.⁶⁶ In addition, more than 4,000 Jamaicans were detained under the state of emergency provisions.⁶⁷

⁶¹ Jamaica Observer, “Police unaware of death squad probe but willing to cooperate,” April 3, 2014, available at: http://www.jamaicaobserver.com/news/Police-unaware-of-death-squad-probe-but-willing-to-cooperate_16397601

⁶² Jamaica Gleaner, “Jamaica is Committed to Transparency And Accountability, Says Security Minister,” July 26, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=54468>

⁶³ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁶⁴ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁶⁵ IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, August 10 2012, para 33, available at: <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

⁶⁶ IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, August 10 2012, para 33, available at: <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

⁶⁷ IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, August 10 2012, para 33, available at: <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

37. After the interim report into the Tivoli Gardens Incursion prepared by the Office of the Public Defender (“OPD”) on April 29, 2013, the Jamaican Cabinet was of the view that a commission of enquiry into the Tivoli Gardens ought to be held as an investigative tool.⁶⁸

38. As a matter of update, the Jamaican government has appointed a Commission of Enquiry which is headed by Sir David Simmons (a retired Chief Justice of Barbados), Hazel Harris, and Professor Anthony Harriott (Director of the Institute of Criminal Justice and Security at the University of the West Indies).⁶⁹ The Commission of Enquiry was sworn in on August 29, 2014.⁷⁰

39. The terms of reference of the Commission of Enquiry include inquiring into conduct of operations by the security forces of Jamaica in Tivoli Gardens and related areas during the State of Emergency in May 2010⁷¹; whether the rights of any person or persons were violated in any of the affected or related communities by either law enforcement officers or by anyone else and the manner and extent of such violations, and by whom such violations were perpetrated⁷²; and whether any dereliction of duty or unlawful conduct is attributable to any person(s) in that chain of command in connection with the decisions concerning or the execution of the operations by the security forces in Tivoli Gardens and related areas during May 2010, and the nature and extent of such derelictions of duty or unlawful conduct.⁷³

40. However, questions have been raised regarding the scope and legality of the terms of reference. Human rights organizations have voiced concern that the terms of reference do not specify “the need for the Commission of Enquiry to refer matters to the relevant prosecutorial bodies should it obtain information indicating that identified individuals may have been responsible for committing, ordering, encouraging, or permitting human rights abuses, or complicity in such abuse.”⁷⁴ Nor do they provide for inquiring into specific allegations of human rights violations in relation to extrajudicial killings, enforced disappearances, and arbitrary arrests and detention that had been reported during the incursion. Finally, there is concern that the terms of reference were not framed in a way that will require the Commission of Enquiry to assess the operations carried out by security forces against international human rights law, particularly as it relates to specific international standards on the use of firearms.⁷⁵

41. In response to the draft version of the present report, the Jamaican State took note of the comments made by civil society organizations regarding the current West Kingston Commission (“Tivoli Gardens Commission of Enquiry”). The State goes on to mention that a number of concerns raised by those entities are not meant to be dealt with by an Enquiry.⁷⁶ The West Kingston Commission was said to be

⁶⁸ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014; Jamaica Observer, “Tivoli enquiry on – JCF, JDF welcome probe,” May 7, 2013, available at: <https://www.jamaicaobserver.com/news/Tivoli-enquiry-on---JCF--JDF-welcome-probe-14218410>

⁶⁹ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁷⁰ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁷¹ Term of Reference 1(d) available at: <http://jis.gov.jm/media/TOR-for-West-Kingston-COE-2014.pdf>

⁷² Term of Reference 1(j).

⁷³ Term of Reference 1(l).

⁷⁴ Amnesty International Public Statement, “Jamaica: Mandate of Tivoli Commission of Enquiry must be strengthened”, AMR/38/001/2014 (Feb 26, 2014), at pg. 1 available at: <http://www.amnesty.org/es/library/asset/AMR38/001/2014/en/c267d075-2f75-4a62-80ef-9010b951cb12/amr380012014en.pdf>.

⁷⁵ Amnesty International Public Statement, “Jamaica: Mandate of Tivoli Commission of Enquiry must be strengthened”, AMR/38/001/2014 (Feb 26, 2014), at pgs. 1-2 available at: <http://www.amnesty.org/es/library/asset/AMR38/001/2014/en/c267d075-2f75-4a62-80ef-9010b951cb12/amr380012014en.pdf>.

⁷⁶ Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 17.

carrying out an investigatory function that is not meant to supplant that of the police or INDECOM.⁷⁷ The State has emphasized that the West Kingston Commission acts with a view to providing a report to the Governor-General in order for further action to be taken.⁷⁸ Therefore, the holding of an Enquiry is not meant to take the place of legal challenges before the Courts for rights violations or of prosecution for crimes alleged to have been committed.⁷⁹

42. The IACHR considers that the concerns raised present valid points that must be addressed in the course of the enquiry, and that it is important for the State to move forward expeditiously with measures to ensure clarification and justice. The Tivoli Enquiry commenced on December 1, 2014⁸⁰ and the IACHR will continue to monitor its results.

E. Due diligence to prevent, deter, and lawfully suppress acts of violence or crime

43. In addition to what was mentioned in the paragraphs 34-42 above regarding the State's efforts to act with due diligence in combating impunity through investigative inquiries, the State is also taking other measures in this regard. According to official information, measures have been taken to ensure that the JCF acts with due diligence. The Ministry of National Security instructed the Commissioner of Police to "complete and promulgate" in the JCF's Force Orders protocols with INDECOM in the following matters: arrest policy, incident scene preservation (and the primacy of INDECOM at crime scenes), immediate notification of INDECOM, ballistic submissions, administrative reviews, independent officer accounts and non-collaboration on the accounts of incidents, and finally, submission of officer's statements.⁸¹ The issue of access to justice in such cases is analyzed in more detail in paragraphs 75-83 below.

44. In November 2014, the Minister of National Security, Mr. Peter Bunting, announced that plans were made to downplay the paramilitary style policing which will see fewer police personnel dressed in blue denim, body armor, and unnecessarily armed with assault rifles.⁸² The United States' government provided the State with 3,400 kits containing non-lethal weapons such as a retractable baton, a pepper spray canister, a pair of handcuffs and a utility belt.⁸³ The kits are expected to encourage the use of less forceful methods of law enforcement, including the lethal use of firearms.⁸⁴

45. The Ministry of National Security also expressed plans to utilize body-worn cameras for select JCF units in order to improve the collection of evidence of criminal activity; to improve the transparency of JCF activities when interacting with the public; to encourage JCF officers to act in accordance with the Force's professional standards, including those standards relating to the appropriate use of force;

⁷⁷ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 17.

⁷⁸ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 17.

⁷⁹ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 18.

⁸⁰ Jamaica Observer, "Tivoli enquiry opens today", December 1, 2014, available at: <http://www.jamaicaobserver.com/news/Tivoli-enquiry-opens-today>

⁸¹ Ministry of National Security, "National Security Minister's Statement on Crime in 2013" (Jan. 24, 2014), available at: <http://jis.gov.jm/national-security-ministers-statement-crime-2013/>

⁸² Jamaica Gleaner, "Jamaicans To See JCF Culture Shift – Bunting", November 15, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=56643>; Irving, Shelly-Ann, "JCF Receives Non-Lethal Equipment", Jamaica Information Service, November 14, 2014, available at: <http://jis.gov.jm/jcf-receives-non-lethal-equipment/>

⁸³ Jamaica Gleaner, "Jamaicans To See JCF Culture Shift – Bunting", November 15, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=56643>; Irving, Shelly-Ann, "JCF Receives Non-Lethal Equipment", November 14, 2014, available at: <http://jis.gov.jm/jcf-receives-non-lethal-equipment/>

⁸⁴ Irving, Shelly-Ann, "JCF Receives Non-Lethal Equipment", November 14, 2014, available at: <http://jis.gov.jm/jcf-receives-non-lethal-equipment/>

and finally, to create a record of JCF officers from unfair allegations of violations of JCF professional standards.⁸⁵

46. The IACHR welcomes changes such as the body-worn cameras, which have proven effective in other jurisdictions, and will welcome future information on these initiatives.

F. Modernization and professionalization of the police force

47. The State has informed the IACHR that in response to its recommendations h(i) and (ii), all members of the JCF are trained upon entering the Force in the fundamental rights and freedoms of individuals that are enshrined in the Constitution, most importantly the right to life.⁸⁶ According to the State, training of law enforcement officials within the JCF is designed to promote fair and impartial treatment of all individuals, with sensitivity to gender identity, sexual orientation and religious factors, with an awareness of cultural diversity and discrimination.⁸⁷

48. A central theme of training is the legal framework for protecting vulnerable groups such as women who have been exposed to domestic or sexual crimes.⁸⁸ The training is conducted through more than eight hours of practicum in human rights by lawyers and more than three days of para-professional counseling training conducted by the psychology department at the Northern Caribbean University.⁸⁹ The JCF also relies on trainers drawn from governmental and non-governmental organizations, including members of the judiciary, the Office of the Director of Public Prosecutions (“DPP”), the Centre for the Investigation of Sexual Offences & Child Abuse (“CISOCA”), the University of the West Indies (“UWI”), and a number of human rights NGO’s.⁹⁰

49. However, JFJ informed the IACHR that training by law enforcement, although lauded by the State, is carried out by civil society organizations and that there is no institutionalized training for police officers. Notably, the initial training only spans eight sessions and does not continue beyond the recruiting stage.⁹¹ They reported that the training is not integral or sustained.

⁸⁵ Ministry of National Security, “National Security Minister’s Statement on Crime in 2013” (Jan. 24, 2014), available at: <http://jis.gov.jm/national-security-ministers-statement-crime-2013/>

⁸⁶ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 3; IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁸⁷ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 3; IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁸⁸ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 3; IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁸⁹ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 3; IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁹⁰ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁹¹ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

IV. ADMINISTRATION OF JUSTICE

50. In the 2012 Report the IACHR made the following recommendations to the State the administration of justice:

- a. End police impunity by aggressively pursuing cases at all levels in which state actors are alleged to have used excessive force.
- b. Expand, support, and continue to monitor legal aid services for those in the criminal justice system who cannot afford representation.
- c. Establish an independent body to investigate police misconduct to remove the potential for conflict of interest; and adequately staff, fund, and provide resources and equipment for such a body.
- d. Continue to train police officers in the rule of law and human rights.
- e. Employ adequate numbers of forensic investigators and ballistics experts and maintain support staff and equipment used for autopsies, forensic tests, and ballistics tests.
- f. Ensure the resources and working conditions necessary for forensic pathologists and other specialists, such as ballistic experts, to complete their work in a timely and effective way.
- g. Create a system to review DPP decisions not to prosecute in cases of police violence.
- h. Adequately staff and maintain the Coroner's Courts and work to end the practice of "professional jurors" to ensure that a pro-police bias does not impede justice.
- i. Strengthen the witness protection program to safeguard those who agree to participate in the criminal justice system, and ensure that police officers follow its guidelines strictly.
- j. Clarify the scope of the powers of the Independent Commission, and ensure that it can effectively pursue investigations and cases in the interests of justice and accountability.

A. Police Impunity

51. Jamaica indicates that casualties sometimes result from the use of justifiable force by the police in the lawful execution of their duties for the purpose of self-defense. At the same time, the State recognizes that challenges persist in respect of allegations of abuse by its agents.⁹²

52. Civil society organizations have noted that over the last four years, more than 1,000 Jamaicans have lost their lives as a result of actions by the Jamaican security forces, primarily the Jamaica Constabulary Force ("JCF").⁹³ Almost half of those cases are being investigated by the Independent Commission of Investigations ("INDECOM") as 'Category A' fatalities, meaning that the fatalities were the result of circumstances where there may have been no justification for the action taken, or neglect.⁹⁴

⁹² IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁹³ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁹⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

53. As mentioned in paragraph 32 above, Jamaicans for Justice (“JFJ”) have indicated that in 2013, 258 civilians were gunned down by the police, and in January 2014 there were 22 deaths at the hands of security forces. JFJ contends that, as of August 2014, 96 civilians had been killed by the police (averaging 3 civilians weekly).⁹⁵ They contend that, at present, only four officers have ever been convicted of murder.⁹⁶

54. Civil society organizations expressed concern that impunity within the JCF remains a serious problem since it undermines the trust and credibility of the police force and the criminal justice system as an institution.⁹⁷

55. Reports of extrajudicial killings and other complaints against security forces, amounting to allegations of breaches of fundamental rights, are investigated by INDECOM. INDECOM was established in August 2010 with the aim of investigating questionable shootings by the JCF and the Jamaica Defence Force (“JDF”).⁹⁸ INDECOM derives its authority to conduct investigations concerning actions by members of the security forces and other State agents from the INDECOM Act. Section 13 of the INDECOM Act states that INDECOM may undertake an investigation on its own initiative.⁹⁹ According to section 20 of the INDECOM Act¹⁰⁰, the Commissioner of INDECOM and its investigative staff are given powers, authorities and privileges as those afforded by law to a constable in the exercise and conduct of their investigative functions against members of security forces and state agents.¹⁰¹ The IACHR acknowledges the State’s efforts through the role of INDECOM to strengthen the response to police abuses and impunity.

56. According to the State, recent data has shown that INDECOM has brought 118 charges against members of security forces and has, to date, secured eight convictions.¹⁰² The Director of Public Prosecutions (“DPP”) reserves the right to bring prosecutions against police officers in the normal course of its duties. The State contends that while there have been longstanding complaints that the DPP’s Office is not sufficiently vigilant in pursuing prosecutions in respect of police officers, INDECOM is now available as another route of bringing prosecutions against police officers.¹⁰³ The Constitutional Court of Jamaica has ruled that INDECOM may also arrest and prosecute security personnel and that these powers given to it by statute are not in conflict with the DPP’s constitutional power to prosecute.¹⁰⁴ Therefore, in addition to

⁹⁵ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁹⁶ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁹⁷ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁹⁸ Jamaica Observer, “Police groups to challenge INDECOM powers,” August 3, 2013, available at: http://www.jamaicaobserver.com/news/Police-groups-to-challenge-INDECOM-powers_14813219

⁹⁹ The Independent Commission of Investigations Act, available at: <http://www.japarliament.gov.jm/attachments/341/The%20Independent%20Commission%20of%20Investigation%20Act.%202010.pdf>

¹⁰⁰ Section 20 of the INDECOM Act states: “For the purpose of giving effect to sections 4, 13 and 14, the Commissioner and the investigative staff of the Commission shall, in the exercise of their duty under this Act have the like powers, authorities and privileges as are given by law to a constable.” Section 4 refers to INDECOM’s investigative functions and section 14 outlines the conduct of investigations.

¹⁰¹ Jamaica Observer, “Police groups to challenge INDECOM powers,” August 3, 2013, available at: http://www.jamaicaobserver.com/news/Police-groups-to-challenge-INDECOM-powers_14813219; Gayle, Barbara, “INDECOM has Powers of Arrest, Court Rules,” Jamaica Gleaner, July 31, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130731/lead/lead4.html>

¹⁰² IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

¹⁰³ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

¹⁰⁴ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

statutory powers granted to it under the INDECOM Act, INDECOM also derives its authority from the common law.

57. The Inter-American Commission identified structural deficiencies that have contributed to perpetuating impunity in its 2012 Report. While steps are being taken to improve the response, there efforts need to be further developed and intensified.

1. Scope of powers of the Independent Commission

58. Civil society organizations have indicated that the creation of INDECOM has been an improvement with regard to accountability, and that since its creation there has been a marked advancement in the manner and seriousness in which complaints of abuse are now being treated.¹⁰⁵ However, a lack of cooperation between INDECOM and the DPP, and challenges to INDECOM's authority by the JCF hamper INDECOM's smooth operation.¹⁰⁶

59. Given the challenges to INDECOM's authority and the execution of its operational mandate, recent developments further clarifying the Independent Commission's powers may be encouraging. In a recent incident, INDECOM had served notice to police officers in connection with the shooting death of 16 year old Derrick Bolton and Rohan Dixon in 2010.¹⁰⁷ The police officers failed to comply and challenged INDECOM's authority before the Constitutional Court, which held that INDECOM acted within the scope of the law when it requested that officers provide statements in relation to the fatal shootings.¹⁰⁸

60. The Constitutional Court ruling held that INDECOM has powers to arrest and charge members of the constabulary without a ruling from the DPP.¹⁰⁹ It also held that there is no requirement for a ruling of the DPP before members of the Police Force are arrested and charged by INDECOM officers. In addition, the powers possessed by INDECOM officers to arrest, charge, and prosecute members of the police force in no way undermine the constitutional authority of the DPP, who still retains the authority to take over and/or discontinue any prosecution where such action is deemed appropriate by the DPP.

61. The Constitutional Court stated in its written judgment that INDECOM should have the power to initiate prosecutions given the remit given to INDECOM and the acknowledged existence of the common law power of private individuals to prosecute.¹¹⁰ The Court acknowledged that it was cognizant of Section 25 of the INDECOM Act which requires an investigator on the request of the DPP in relation to a prosecution arising out of an incident, to attend court and provide such other support as the DPP may require in relation to proceedings instituted under the Act does not however preclude the exercise by INDECOM or officers on its behalf of the common law power to itself prosecute matters it has investigated.¹¹¹ The Court

¹⁰⁵ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁰⁶ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁰⁷ Barrett, Livern, "Eight cops found guilty of disobeying INDECOM," Jamaica Gleaner, July 28, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=54512>

¹⁰⁸ Barrett, Livern, "Eight cops found guilty of disobeying INDECOM," Jamaica Gleaner, July 28, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=54512>

¹⁰⁹ The Police Federation et. al v The Commissioner of the Independent Commission of Investigations and the Attorney General of Jamaica [2013] JMFC Full 3, available at: <http://supremecourt.gov.jm/sites/default/files/judgments/The%20Police%20Federation%20%20and%20Watson,%20Merrick%20et%20al%20v%20The%20Commissioner%20of%20the%20Independent%20commission%20of%20Investigations%20and%20The%20Attorney%20General%20of%20Jamaica.pdf>; The decision is currently being appealed, but this is the law as it stands at present.

¹¹⁰ The Police Federation et. al v The Commissioner of the Independent Commission of Investigations and the Attorney General of Jamaica [2013] JMFC Full 3, at para 310.

¹¹¹ The Police Federation et. al v The Commissioner of the Independent Commission of Investigations and the Attorney General of Jamaica [2013] JMFC Full 3, at para 311.

also went on to consider there are significant and adequate safeguards in place to reign in any prosecution should it be deemed either that it should not have been advanced or that its continuation is not in the public interest.¹¹²

62. Civil society organizations have expressed concern that the overriding authority of the DPP to take over or discontinue prosecutions has led to the prosecution of very few cases of extrajudicial killings. There have been two reasons advanced for this: the first is the institutionalized bias in favor of the police; and secondly, investigations are so poor that successful prosecutions are unlikely.¹¹³ Civil society organizations have informed the IACHR that there is a backlog of cases involving police killings and the average time taken to determine whether to bring charges is between two to three years.¹¹⁴

63. The prosecution of few cases of extrajudicial killings has also been attributed to the lack of a robust legislative framework in this context. For example, civil society organizations have highlighted that the State has failed to pass crucial legislation, such as regulations to the Evidence Act, which would facilitate improvements in this regard.¹¹⁵

64. Using the example of the Kemar Walters case, civil society organizations illustrated the challenges to prosecution in instances of extrajudicial killings. Mr. Walters disappeared in 2004 and police officers were charged with his murder. A policeman was found guilty in a majority verdict of nine but the judge threw the case out.¹¹⁶ In October 2014, the DPP indicated that she would not prosecute Mr. Walters' case due to the high costs that would be incurred in prosecuting the matter, estimated at JA\$20 million.¹¹⁷ The DPP preferred to wait for the implementation of the evidence regulations to be passed that would allow for the use of video testimony of overseas witnesses, likely at the end of 2015.¹¹⁸ Not only are civil society organizations concerned that there is no way to challenge the DPP's discretion to prosecute or to retry a particular case, they are also worried that the proposed evidence regulations could take much longer to be implemented, given the need to retrofit courts with the appropriate technology.

65. Jamaica accepts that challenges persist in respect to the allegations of abuse by agents of the State.¹¹⁹ However, the State mentions that it is important to note that not all killings by police officers are extrajudicial killings as there may be casualties resulting from the use of justifiable force by the police in the lawful execution of their duties or for the purpose of self-defense.¹²⁰ The State reinforced its commitment to

¹¹² The Police Federation et. al v The Commissioner of the Independent Commission of Investigations and the Attorney General of Jamaica [2013] JMFC Full 3, at para 312.

¹¹³ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹¹⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹¹⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹¹⁶ It is not clear from media reports on what basis the judge threw the case out. However, it is gathered that the judge preferred a unanimous verdict of guilty or not guilty, rather than a majority verdict.

¹¹⁷ Approximately US\$173,000; Jamaica Observer, "DPP could end murder trial of Boulevard cops today", October 13, 2014, available at: <http://www.jamaicaobserver.com/news/DPP-could-end-murder-trial-of-Boulevard-cops-today>; IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹¹⁸ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹¹⁹ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 13.

¹²⁰ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 13.

ensuring that all allegations of extra-judicial killings are properly investigated, and that where a *prima facie* case is made out, that it is prosecuted.¹²¹

66. In responding to the draft version of the report, the State drew attention to the IACHR's discussion of the Kemar Walters trial. Regarding the unanimity of the verdict, the State noted that where any citizen is on trial for murder, in order for the prosecution to secure a conviction, the verdict must be unanimous.¹²² With reference to section 31 and 32 of the Jury Act, the State mentioned that a nine person verdict will only be accepted in cases of manslaughter.¹²³

67. As the IACHR had mentioned in its 2012 Report, there were identifiable problems at all stages of post-murder investigations that contribute to impunity, including the lack of impartiality of the investigating institution, tampering with evidence, and a severe lack of resources.¹²⁴ The IACHR remains concerned with this "chain of causality" which is illustrated by deficiencies in one stage creating deficiencies in later stages.¹²⁵ In that vein, the IACHR's view is that with no clear timeline as to when the regulations to the Evidence Act will be passed into law, the pattern of impunity will continue in relation to structural deficiencies in the administration of justice.¹²⁶

2. Challenges to INDECOM's mandate

68. Despite some positive steps, INDECOM still faces challenges in achieving its objectives. A principle challenge faced by INDECOM is that in the majority of cases dealt with there was insufficient evidence to charge someone, or for the cases to be proved. In such instances, those cases were passed to the Coroner's Court for further investigation.¹²⁷ With only one Special Coroner assigned to the Coroner's Court, the processing rate at which inquests into deaths of citizens at the hand of the State are handled is slow.¹²⁸

69. In its March 2012 report to Parliament, INDECOM indicated that it would better served with the use of its own forensics laboratory.¹²⁹ However, at present INDECOM does not have an independent laboratory. It has also faced obstacles in the recruitment of its own ballistics expert as a result of its dependency on the Commissioner of Police who is the only official with the authority to deem a person a ballistic expert¹³⁰. The lack of an independent laboratory means that INDECOM is faced with the alternative of awaiting forensic evidence and ballistic certificates from the State's Forensic Laboratory, which is a

¹²¹ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 14.

¹²² Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 16.

¹²³ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 16.

¹²⁴ IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, August 10 2012, para 67, available at: <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

¹²⁵ IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, August 10 2012, para 67, available at: <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

¹²⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹²⁷ Dunkley-Willis. Alicia, "Need for more special coroners, says INDECOM," Jamaica Observer, November 19, 2013, available at: <http://www.jamaicaobserver.com/NEWS/Need-for-more-special-coroners--says-INDECOM-15463755>

¹²⁸ Dunkley-Willis. Alicia, "Need for more special coroners, says INDECOM," Jamaica Observer, November 19, 2013, available at: <http://www.jamaicaobserver.com/NEWS/Need-for-more-special-coroners--says-INDECOM-15463755>

¹²⁹ INDECOM, "Quarterly Report to Parliament – 2012: Demanding Accountability", March 31, 2012, at 2, available at: <http://www.indecom.gov.jm/Release/Report%20to%20Parliament.pdf>

¹³⁰ Firearms Act section 46A(4); IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

department within the JCF.¹³¹ Essentially, INDECOM must rely on the JCF to provide evidence against its own officers. JFJ stated that two-third of the cases of fatal shootings under investigation by INDECOM would have been complete if the forensic evidence and ballistic certificates had been provided by the Forensic Laboratory.¹³² As a result, INDECOM continues to experience delays in getting prompt statements from security force personnel.¹³³ There were incidents where senior officers permitted officers who were involved in shootings to go off-duty without making themselves available for interview with INDECOM's investigators.¹³⁴

70. According to civil society organizations, INDECOM has also taken over 1,500 cold cases that were formally with the Bureau of Special Investigations ("BSI").¹³⁵ INDECOM continues to be overburdened and there continue to be delays in the processing of cases.¹³⁶ The draft INDECOM legislation had recommended that INDECOM be staffed with 50 investigators.¹³⁷ In INDECOM's report to Parliament in 2012, it highlighted that it had a staff component of 35 investigators and 81 staff members.¹³⁸ INDECOM appealed in its report to Parliament for budgetary support in order to be at its full operational capacity.¹³⁹ In 2013, the head of INDECOM, Mr. Terrence Williams, in a submission to a joint select committee of Parliament that INDECOM only had a cohort of 37 investigators.¹⁴⁰ In the same forum, Mr. Williams also stated that INDECOM needed more attorneys.¹⁴¹ INDECOM has an estimated budget of JA\$333.0 million¹⁴² which is not predicated on the hiring of attorneys to conduct prosecutions.¹⁴³

B. Challenges to conducting prompt criminal investigations

71. In addition to the delays at the Coroner's Courts, marked delays occur at several stages in the criminal justice process including the Government Forensic Lab and the DPP.¹⁴⁴ It has been reported that

¹³¹ INDECOM, "Quarterly Report to Parliament – 2012: Demanding Accountability", March 31, 2012, at 1, available at: <http://www.indecom.gov.jm/Release/Report%20to%20Parliament.pdf>

¹³² IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹³³ INDECOM, "Safeguarding the Right to Life: Issues from Investigations of Jamaica's Security Forces in 2012", March 29, 2013, at 5, available at: <http://www.indecom.gov.jm/Release/Safeguarding%20the%20Right%20to%20Life.pdf>

¹³⁴ INDECOM, "Safeguarding the Right to Life: Issues from Investigations of Jamaica's Security Forces in 2012", March 29, 2013, at 5, available at: <http://www.indecom.gov.jm/Release/Safeguarding%20the%20Right%20to%20Life.pdf>

¹³⁵ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹³⁶ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹³⁷ Jamaica Gleaner, "INDECOM Hampered by Staff Shortage", August 2, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130802/lead/lead4.html>

¹³⁸ INDECOM, "Quarterly Report to Parliament – 2012: Demanding Accountability", March 31, 2012, at 3, available at: <http://www.indecom.gov.jm/Release/Report%20to%20Parliament.pdf>; It is not clear if 81 represents the total number of staff or the number of staff who are not investigators.

¹³⁹ INDECOM, "Quarterly Report to Parliament – 2012: Demanding Accountability", March 31, 2012, at 3, available at: <http://www.indecom.gov.jm/Release/Report%20to%20Parliament.pdf>

¹⁴⁰ Jamaica Gleaner, "INDECOM Hampered by Staff Shortage", August 2, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130802/lead/lead4.html>

¹⁴¹ Jamaica Gleaner, "INDECOM Hampered by Staff Shortage", August 2, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130802/lead/lead4.html>

¹⁴² Approximately US\$2,885,000.

¹⁴³ Jamaica Gleaner, "Bring Reform to DPP's Office", October 7, 2013, available at: <http://jamaica-gleaner.com/gleaner/20131007/lead/lead7.html>

¹⁴⁴ Jamaica Observer, "Urgent need for progress on human rights in 2014," January 8, 2014, available at: http://www.jamaicaobserver.com/news/Urgent-need-for-progress-on-human-rights-in-2014_15746413

there are over 400 cases in the Coroner's Court, some of which date back ten years and to date an Assistant Coroner has not been appointed as provided by the Coroner's Act to alleviate the workload of the Special Coroner.¹⁴⁵ Working at its most efficient level, the Special Coroner is only able to process approximately 60 cases per year.¹⁴⁶

72. The DPP has also been slow to provide rulings on cases involving complaints in respect of police excesses and/or fatal shootings, thereby further delaying the administration of justice.¹⁴⁷

73. Civil society organizations have criticized the culture of adjournments, as well as archaic and inefficient court administration practices which all contribute to the gridlock in conducting prompt criminal investigations.¹⁴⁸

74. However, civil society organizations have reported positive advancements, which include that the practice of professional (repeated) jurors has ceased completely in Kingston.¹⁴⁹ Outside of Kingston, there are instances where court authorities have to be reminded not to use this approach.¹⁵⁰

V. PRISON CONDITIONS AND RIGHTS OF PERSONS DEPRIVED OF LIBERTY

75. The following recommendations were made in the 2012 Report with regard to persons deprived of liberty:

- a. Amend its Constitution in order to fulfill its obligations to individuals under the American Convention and international law standards with respect to the right to personal liberty.
- b. Comply with applicable international human rights standards and take the necessary measures to resolve the problem of overcrowding and unsanitary conditions in prisons and police holding cells.
- c. Inform detainees immediately after detention of their right to counsel and ensure adequate representation for all persons regardless of socioeconomic status.
- d. Comply with international and Constitutional law standards by ensuring that every instance of detention is given prompt judicial review by a judge, magistrate, or legal authority.
- e. Close loopholes in the law that allow police to issue their own warrants, set bail, and detain indefinitely under a claim of a pending "identification parade."
- f. Maintain statistics not just on individual detainees but on the numbers of detainees, charges, prosecutions, and releases country-wide.

¹⁴⁵ Jamaica Observer, "Urgent need for progress on human rights in 2014," January 8, 2014, available at: http://www.jamaicaobserver.com/news/Urgent-need-for-progress-on-human-rights-in-2014_15746413

¹⁴⁶ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁴⁷ Jamaica Observer, "Urgent need for progress on human rights in 2014," January 8, 2014, available at: http://www.jamaicaobserver.com/news/Urgent-need-for-progress-on-human-rights-in-2014_15746413

¹⁴⁸ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁴⁹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁵⁰ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

- g. Improve the quantity and quality of food so as to ensure adequate nutrition for detainees and prisoners.
- h. Allocate more resources to the medical attention of inmates in order to guarantee that they have access to adequate medical, psychiatric and dental care, and to appropriate medication.
- i. Expand rehabilitation programs so that more inmates may have access to them.
- j. Expand educational and cultural activities available in prisons.
- k. Allow persons deprived of liberty to maintain direct and personal contact through regular visits with members of their family, partners and legal representatives.
- l. Maintain adequate and appropriate facilities for [...] persons with disabilities [including those with mental disabilities].

A. Background

76. There are still reports of unlawful detentions and allegations that persons detained are not informed of the reason for their arrest, or are held for more than 24 hours without the charges being made known to them in contravention of section 14 of the Jamaican Constitution.¹⁵¹ Jamaicans for Justice have indicated that there were reported instances in which persons detained were not brought promptly before a justice when arrested without warrant¹⁵² and that bail was denied as a means of punishment.¹⁵³ Civil society organizations also reported that in extreme cases, pre-trial detention in police lock-ups could last as long as four to five years with detained persons being held in appalling conditions.¹⁵⁴

77. Civil society organizations have informed the IACHR that detainees' rights to counsel and speedy trial are still breached.¹⁵⁵ Also, it has been brought to the IACHR's attention that there is no single statutory regulation on detention or police lock-ups, which leads to abuse.¹⁵⁶ JFJ has indicated that Resident Magistrates and Justices of the Peace have failed to provide oversight of police lock-ups by blindly acquiescing to police dictates, ignoring their duty to check detention logs, to check police stations, and to check the veracity of police warrants.¹⁵⁷

78. The IACHR continues to receive information regarding death of persons while detained in police custody. Most recently, the IACHR was informed of the death of Mario Deane, who died on August 6,

¹⁵¹ Jamaicans for Justice, "Time to Review Detention Practices: Part 1," Jamaica Observer, January 22, 2014, available at: <http://www.jamaicaobserver.com/news/Time-to-Review-Detention-Practices--Part-1>

¹⁵² Jamaicans for Justice, "Time to Review Detention Practices: Part 1," Jamaica Observer, January 22, 2014, available at: <http://www.jamaicaobserver.com/news/Time-to-Review-Detention-Practices--Part-1>; IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁵³ Jamaicans for Justice, "Time to Review Detention Practices: Part 1," Jamaica Observer, January 22, 2014, available at: <http://www.jamaicaobserver.com/news/Time-to-Review-Detention-Practices--Part-1>

¹⁵⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁵⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁵⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁵⁷ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

2014 after sustaining a beating while he was held at Barnett Street police lock-up in Montego Bay.¹⁵⁸ Although two inmates have been charged for Mr. Deane's death, the matter remains under investigation. The death of Mr. Deane was raised by civil society organizations as illustrating the ongoing practice of unlawful detention and the consequences such unlawful detention has on the human rights of detainees. The information received by the IACHR from civil society organizations during the October 2014 hearing indicated that on August 3, 2014, Mario Deane was arrested without a warrant for possessing a small quantity of marijuana.¹⁵⁹ His bail was reportedly denied twice, once when he refused to give police directions to his home, and again when he remarked that he did not like the police and was returned to his cell.¹⁶⁰ The information further indicates that Mr. Deane had no access to counsel.¹⁶¹ JFJ has argued that the case of Mr. Deane is not isolated and it shows the lack of progress made in implementing the recommendations of the IACHR's 2012 Report.¹⁶²

79. In reference to the death of Mario Deane, the State preferred not to offer a determination as to whether it was responsible for Mr. Deane's death. The State reiterated that the government's stance is that the matter is one that should be addressed within the domestic legal system, that due process of law should be observed, and that whomever is found responsible will be prosecuted.¹⁶³

80. The IACHR accepts that there is ambiguity surrounding the death of Mario Deane in police custody, as it is not clear as to whether his death is directly attributable to the police or to his cellmates. However, the IACHR acknowledges that the State has a responsibility to ensure that prison conditions are safe and that prisons work as they should.¹⁶⁴ The IACHR is also concerned that there is very little supervision and accountability in lock-ups for those detained for long periods.¹⁶⁵ To date, the State has not made implemented sufficient reforms of law, policy or practice with regard to fulfilling its obligations in respect to persons deprived of liberty.

B. Conditions in detention

81. Overcrowding remains a major concern. The total capacity of police lock-ups (temporary holding facilities) is just over 1,700 and police report that on average there are 2,100 persons in these cells.¹⁶⁶ JFJ has reported that police lock-ups also continue to be filthy, crowded, dangerous and inhumane places

¹⁵⁸ Jamaica Observer, "Mario Deane's post-mortem postponed," August 14, 2014, available at: <http://www.jamaicaobserver.com/regional/Mario-Deane-s-post-mortem-postponed-17351887>; Nationwide Radio, "Police High Command Denies Constabulary Involvement in Mario Dean's Death," August 7, 2014, available at: <http://nationwideradiojm.com/police-high-command-denies-constabulary-involvement-in-mario-deans-death/>

¹⁵⁹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁶⁰ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁶¹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁶² IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁶³ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁶⁴ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁶⁵ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁶⁶ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

where detainees may be exposed to physical abuse by fellow inmates or officers.¹⁶⁷ The correct capacity of adult correctional centers is reportedly 2,650 and there are on average 3,600 inmates in adult correctional centers.¹⁶⁸

82. The State pledged to take the necessary measures to resolve the problem of overcrowding in prisons. The Jamaican government has set up a Committee of Parliament under the auspices of the Ministry of National Security and Justice to review these problems and to develop concrete policy and other steps to eliminate them.¹⁶⁹ The Committee includes representatives from the relevant government stakeholders as well as members of civil society.¹⁷⁰ In its response to the draft version of the present report, Jamaica reiterated that it views the problem of prison overcrowding and conditions as very serious ones and wished to assure the IACHR that the issue is receiving attention.¹⁷¹ The State noted that the aim of the Parliamentary Committee is to review these problems and develop concrete policy and other steps to eliminate them.¹⁷² The State has indicated that the policy is in an advanced stage of development and that in the short term, the Ministry of National Security is taking steps to secure the necessary funding.¹⁷³

83. It is important to note that the Department of Correctional Services (“DCS”) continues to care for inmates and wards in its facilities in light of the limited resources available. The State has informed the IACHR that efforts to improve several aspects of the current operations of the DCS are underway. The State confirmed that plans were being pursued with the aim of establishing a new 5,000 bed correctional facility to house both male and female inmates from centers with the worst conditions (Fort Augusta, Towers Street and St Catherine’s Adult Correctional Centers).¹⁷⁴

84. The IACHR is concerned with the possibility that the State is considering housing both male and female inmates in the same facility. This practice would be contrary to the IACHR’s Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas which recommends that persons deprived of liberty be kept in separate institutions separate places of deprivation of liberty or in different sections within the same institution, taking account of their sex.¹⁷⁵

85. In response to this, the State has indicated that it has no intention of housing male and female prisoners in contravention of best practices.¹⁷⁶ Jamaica added that it is working to reconfigure the

¹⁶⁷ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

¹⁶⁸ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

¹⁶⁹ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

¹⁷⁰ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

¹⁷¹ Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 19.

¹⁷² Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 19.

¹⁷³ Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 19.

¹⁷⁴ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

¹⁷⁵ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XIX, available at: <http://www.oas.org/en/iachr/mandate/Basics/principlesdeprived.asp>

¹⁷⁶ Permanent Mission of Jamaica to the Organization of American States, “Follow-up Report on the Situation of Human Rights in Jamaica”, February 27, 2015, at para 20.

prison system so as to best serve the needs of the country, while having due regard for the protection of its citizens' human rights.¹⁷⁷

86. In May 2014, during the 2014/2015 Sectoral Debate¹⁷⁸, the National Security Minister announced that upgrading works are being made to the Tamarind Farm and Richmond Farm Adult Correctional facilities in order to make space available for medium-risk prisoners.¹⁷⁹ The plan is that when renovation works are completed, low-risk prisoners at maximum-security Horizon and St Catherine Adult Correctional Facilities will be transferred to Tamarind Farm and Richmond Farm.¹⁸⁰ He also indicated that potential sites have been identified for a new maximum security prison facility with the aim of ensuring that it is used only for maximum security inmates.¹⁸¹ However, it remains unclear under what time period the renovation and relocation works will be achieved.

87. Civil society organizations have been critical of the State's methods to address overcrowding due to the lack of attention paid to the administrative failures that lead to overcrowding. For example, information received in the October 2014 hearing indicated that the maximum security prison (Tower Street Adult Correctional Centre) is operating at more than twice its capacity, not as a result of inadequate resources, but rather due to a failure to assess inmates' security risk upon entry to the institution.¹⁸² The Auditor General's Office found that many maximum security facilities do not assess their inmates upon entry, as required, in order to determine whether those inmates are eligible for transfer to medium or low security facilities.¹⁸³ Therefore inmates with low security risks are not transferred to medium or low level security correctional facilities leading to overcrowding in maximum security prisons.¹⁸⁴ Overcrowding linked to the failure to implement existing policy and to stop excessive detentions has resulted in the under- population of medium and low level security correctional facilities by between 43-51% as of March 2014.¹⁸⁵

C. Access to justice

1. Right to counsel

88. In addition, the State is required to ensure that every instance of detention is given prompt judicial review by a judge, magistrate, or legal authority. There are still reports that despite, legal safeguards

¹⁷⁷ Permanent Mission of Jamaica to the Organization of American States, "Follow-up Report on the Situation of Human Rights in Jamaica", February 27, 2015, at para 20.

¹⁷⁸ A Parliamentary session in which Ministers of Government and Members of Parliament who did not contribute to the budget debate make their presentation.

¹⁷⁹ Jamaica Gleaner, "Security Minister Announces Plans To Cut Prison Overcrowding," May 13, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=52861>; Bunting, Peter (Minister of National Security), "Sectoral Debate 2014: Working Together to Build a Safer Jamaica", May 13, 2014, at 8, available at: https://www.mns.gov.jm/sites/default/files/documents/files/MNS%20Sectoral%20Presentation%202014_0.pdf

¹⁸⁰ Jamaica Gleaner, "Security Minister Announces Plans To Cut Prison Overcrowding," May 13, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=52861>

¹⁸¹ Angus, Garfield L., "Prison Rehabilitation to be Improved," Jamaica Information Service, May 15, 2014, available at: <http://jis.gov.jm/prison-rehabilitation-programme-improved/>

¹⁸² IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁸³ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁸⁴ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁸⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

against arbitrary and illegal detention, there is little accountability and no proper judicial scrutiny of persons being held in pre-trial detention as discussed in paragraph 77 above.¹⁸⁶

2. Legal representation

89. As of September 30, 2012, the Legal Aid Council had on its roll 379 attorneys enlisted.¹⁸⁷ The IACHR received information from the State which addressed the shortage of attorneys willing to serve as duty counsel. The State reported that the list had increased to over 400 attorneys and will lead to increased access to duty counsel outside of urban areas.¹⁸⁸ The State also informed the IACHR that all police stations are required to maintain a list of duty counsel and that the fee structure for duty counsel is currently being reviewed.¹⁸⁹ The Ministry of Justice has implemented an electronic fee payment system in order to reduce the time lag for duty counsel to receive payment.¹⁹⁰

90. Furthermore, the State proposed that increased fees to duty counsel, as recommended by the Legal Aid Council, have been approved by the Ministry of Finance and will be implemented once the necessary budgetary provisions have been made, although it is not clear when this will be done.¹⁹¹

91. The IACHR considers that the State's commitment to review the fee structure and to facilitate electronic payments is welcome due to reports from civil society organizations that duty counsel found it difficult to collect fees earned and had only been paid for their initial representation.¹⁹²

92. The State reiterated its commitment to ensuring that its citizens have access to all aspects of the justice system.¹⁹³ In relation to the provision of duty counsel, and other Legal Aid services, steps have been taken to increase the number of attorneys empanelled.¹⁹⁴ It is expected that as a consequence of the increase in the number of attorneys qualified to practice, a further increase in duty counsel will be experienced. It is expected that the increase in attorneys will significantly enhance the ability of the Legal Aid Council to ensure access to duty counsel outside urban areas.¹⁹⁵

93. Civil society organizations have pointed out that despite assurances from the State about increasing the number of duty counsel, difficulties in access to legal representation continues. They have alleged in that regard that there are instances where persons detained by police were denied their right to

¹⁸⁶ Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012), March 2014, at para 72.

¹⁸⁷ Ministry of Justice (Jamaica), "Legal Aid Council: Main Functions", (no date) available at: <http://moj.gov.jm/legal-aid-council>

¹⁸⁸ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁸⁹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁹⁰ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁹¹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁹² IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁹³ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

¹⁹⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

¹⁹⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

counsel, as in the case of Mario Deane. Civil society representatives contend that the State has failed to create an enabling environment to ensure that the right to counsel is respected.

3. Arbitrary detention

94. Jamaicans for Justice has reported that with few checks and balances in the system, detainees are held arbitrarily due to exploitation of legal loopholes including the requirement of an identification parade. Given that there are no limits in the legislation on the time that either an adult or juvenile can be held in custody pending an identification parade, detainees can be held for prolonged periods under this provision.¹⁹⁶

95. Section 63A(1) and (2) of the Judicature (Residents Magistrate) Act provides that the Resident Magistrate shall enquire at least once a week into the case of each person listed as detained with the view to the holding of an identification parade and to see that adequate steps are being taken to expedite the identification parade.¹⁹⁷ JFJ has revealed that the law is not always followed.¹⁹⁸ As mentioned in paragraph 77 above, there have been reports that the list provided by the police for review by Resident Magistrates is not always a complete list of persons being detained. It was reported that oftentimes, Resident Magistrates simply sign off on the list given to them by police without inspecting the cells.¹⁹⁹

4. Police warrants

96. The IACHR also reiterates its recommendation to the State to close loopholes in the law that allows police to issue their own warrants. JFJ has reported that there remains no procedure for determining the legality of warrantless arrests and, also, there is no procedure for judicial review of warrantless arrests made by the police.²⁰⁰

D. Rehabilitation programs

97. The State has made tangible efforts to expand rehabilitation programs to persons in State custody. The DCS has offered a two week rehabilitation program to short-term²⁰¹ inmates at Tower Street Adult Correctional Centre. Courses are centered on personal development, family life education, decision-making skills, anger management, entrepreneurship, and drug awareness.²⁰² Training was provided by DCS personnel and experts from other agencies.²⁰³ Inmates who successfully completed the program would be involved in the regular rehabilitation, educational and vocational programs.²⁰⁴

¹⁹⁶ Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012), March 2014, at para 75.

¹⁹⁷ United Nations Human Rights Council. (11 Oct. 2010). Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. A/HRC/16/52/Add.3. p. 6, para. 17., available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-52-Add3.pdf> in Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012), March 2014, at para 75.

¹⁹⁸ Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012), March 2014, at para 75; Judicature (Residents Magistrate) Act available at: [http://www.cda.gov.jm/sites/default/files/content/The%20Judicature%20\(Resident%20Magistrates\)%20Act.pdf](http://www.cda.gov.jm/sites/default/files/content/The%20Judicature%20(Resident%20Magistrates)%20Act.pdf)

¹⁹⁹ Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012), March 2014, at para 76.

²⁰⁰ Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012), March 2014, at para 65.

²⁰¹ Those who had committed non-violent crimes and are usually repeat offenders.

²⁰² Serju, Christopher, "Prisoners Go To School – Correctional Services Turns Spotlight on Rehabilitation Of Short-Term Inmates", Jamaica Gleaner, June 3, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140603/lead/lead2.html>

²⁰³ Serju, Christopher, "Prisoners Go To School – Correctional Services Turns Spotlight on Rehabilitation Of Short-Term Inmates", Jamaica Gleaner, June 3, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140603/lead/lead2.html>

²⁰⁴ Serju, Christopher, "Prisoners Go To School – Correctional Services Turns Spotlight on Rehabilitation Of Short-Term Inmates", Jamaica Gleaner, June 3, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140603/lead/lead2.html>

98. The State also pledged to bring rehabilitation programs in line with international standards.²⁰⁵ Peter Bunting, Minister of National Security, announced during the Sectoral Debate that a five-year strategic plan was developed in partnership with input from United Kingdom Prison Estate consultants.²⁰⁶ He indicated that the principal objectives were to strengthen the systems of rehabilitation, reduce reoffending, and comply with international human rights standards. The Migration Team at the British High Commission in Kingston has pledged to provide a financial contribution under the Rehabilitation and Reintegration Fund in order to establish a home economics center at Diamond Crest Juvenile Correctional Centre, where girls can learn to cook and undertake pastry-making courses.²⁰⁷

99. Despite the above-mentioned efforts by the authorities, it has been noted that there are no structural rehabilitation programs catering to certain categories of offenders, including those with intellectual disabilities, and those convicted of sex and drug offences.²⁰⁸ Also, civil society organizations indicate that the budgetary allocation given to rehabilitation programs in prisons is insufficient.²⁰⁹ For the 2013-2014 period, it was noted that 84% of the DCS budget was devoted to detention, and approximately 10% to rehabilitation.²¹⁰

100. The IACHR calls on the State to strengthen the existing programs with the necessary resources and to expand them to include all categories of persons deprived of liberty.

E. Maintain adequate and appropriate facilities for persons with disabilities

101. The Inter-American Commission has learned that some inmates with intellectual disabilities are housed in special blocks; however, others are housed with the general prison population and many of them do not receive the appropriate treatment due to lack of resources and capacities.²¹¹ The IACHR was informed that the Permanent Secretary in the Ministry of National Security reported to Parliament in January 2014 that the Correctional Department did not have adequately trained staff or appropriate infrastructure to treat persons with mental health challenges.²¹² Additionally, the Permanent Secretary divulged that the ratio of psychiatrists to inmates with intellectual disabilities was unacceptable.²¹³

102. The Inter-American Commission considers that the recognition of this serious situation by Jamaican authorities is a positive step. Accordingly, it calls on the State to adopt the specific measures to

²⁰⁵ Angus, Garfield, L., "Prison Rehabilitation Programme to be Improved," Jamaica Information Service, May 15, 2014, available at: <http://jis.gov.jm/prison-rehabilitation-programme-improved/>

²⁰⁶ Bunting, Peter (Minister of National Security), "Sectoral Debate 2014: Working Together to Build a Safer Jamaica", May 13, 2014, at 7, available at: https://www.mns.gov.jm/sites/default/files/documents/files/MNS%20Sectoral%20Presentation%202014_0.pdf

²⁰⁷ Jordan-West, Anna, "Prisons Without Walls," United Kingdom Foreign and Commonwealth Office, May 2, 2013, available at: <http://blogs.fco.gov.uk/ukinjamaica/2013/05/02/prisons-without-walls/>

²⁰⁸ Jamaica Observer, "Jamaican prisons failing to rehabilitate adults - Auditor General," July 16, 2014, available at: <http://www.jamaicaobserver.com/news/jamaican-prisons-failing-to-rehabilitate-adults---Auditor-General>

²⁰⁹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²¹⁰ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²¹¹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²¹² IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²¹³ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

urgently address and solve the situation, in line with its obligations under international human rights instruments.

VI. RIGHTS OF WOMEN

103. In the 2012 Report, the IACHR made the following recommendations to the State concerning the rights of women:

- a. Adopt an integral state policy to address the specific needs of women and the problems of discrimination and violence they face and incorporate the perspective of gender in law and policy, supported by sufficient human and financial resources, and implemented by all key sectors and Ministries.
- b. Implement fully existing national legislation and public policies designed to protect women from acts of violence and discrimination and the attending political, economic, and social consequences. Designate sufficient resources, and enact the necessary regulations to ensure effective implementation nationwide.
- c. Strengthen laws and policies aiming at ensuring that judicial protection and guarantees are available to women subjected to gender-based discrimination and violence.
- d. Continue undertaking public actions to address forms of violence and discrimination against women, including: adoption of measures to adequately implement the legal reforms adopted; review of existing legislation to make the necessary reforms according to current human rights standards; appropriate assignment of resources to gender equality issues; implementation of training and capacity-building programs for public officials; adoption of initiatives to address prevailing stereotypes in society regarding women; and establishment of needed shelters and services for victims; among others. Measures to address violence against women should also include interventions to eradicate the discrimination and the prevailing socio-cultural patterns which promote the repetition of this problem.
- e. Adopt due diligence related measures to ensure that cases of gender-based violence are promptly, fully and impartially investigated, that those responsible are properly punished, and that the victims obtain redress.
- f. Strengthen the capacity of institutions to combat the pattern of impunity in cases involving violence against women through effective criminal investigations, ensuring that such acts are properly investigated and punished.
- g. Adopt immediate measures to ensure that the public officials involved in prosecuting cases of violence and discrimination against women (including prosecutors, police, judges, court-appointed attorneys, administrative personnel and forensic medicine professionals) are properly educated about women's rights under domestic and international laws. Take further measures to ensure that the integrity and dignity of the victims and their relatives are respected at the time when complaints are filed and during the judicial process.
- h. Develop educational programs for the public, including early childhood programs, with the objective to cultivate respect for women as equals, and encourage recognition of their particular needs and right to live free from violence and discrimination.
- i. Adopt the necessary steps to accede to the Optional Protocol to CEDAW.

- j. Further develop and institutionalize participation spaces for women's rights organizations in the design of legislation, public policies and programs related to the rights of women.

A. National Legislative and Public Policies

1. Social inclusion of women

104. There has been welcome support from Jamaica to adopt the strengthening of its legal and normative framework related to discrimination against women. In the hearing during the 150th Sessions, the State indicated that women in Jamaica hold high political office and represent 59.6% of the public sector (2012 figure).²¹⁴ The participation of women in public life is also visible as women hold a number of senior government posts including Prime Minister, Chief Justice, Director of Public Prosecutions ("DPP"), Solicitor General, Permanent Secretaries, Ambassadors, and Supreme Court judges.²¹⁵

105. The State has expressed its support for the implementation of temporary special measures, or specific actions such as quotas, within its legal framework in order to ensure gender equality. The State has acknowledged, however, that the greatest challenge to implementing such a reformed law is the need for a Constitutional amendment involving the addition of a provision to the Constitution that is specifically geared toward fostering the inclusion of more women in government.²¹⁶ The Bureau of Women's Affairs ("BWA") had advised that any recognition of a quota should be implemented as a temporary measure intended to circumvent the need to amend the Constitution and act only as an initial catalysis for broader political change.²¹⁷

2. Compatibility with international standards

106. The Jamaican Charter of Fundamental Rights and Freedoms prohibits discrimination on the basis of being "male or female."²¹⁸ However, internationally accepted standards recommend addressing discrimination on the basis of "sex", since this term is broader than "male or female" and is able to capture the nuances of gender, including persons in the LGBT community.²¹⁹ The BWA has endorsed this view and has recommended that discrimination on the basis of being "male or female" be amended to enable women who are largely discriminated against on the basis of sex, to be able to apply for redress to the Constitutional Court.²²⁰ Despite these recommendations, the language of the Charter still recognizes discrimination on the basis of being male or female.²²¹

²¹⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²¹⁵ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²¹⁶ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 7.

²¹⁷ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 7.

²¹⁸ Chapter III, Section 13(3)(i)(i), available at: [http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20\(Constitutional%20Amendment\)%20Act.%202011.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20(Constitutional%20Amendment)%20Act.%202011.pdf)

²¹⁹ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 6.

²²⁰ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 6.

²²¹ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 6.

B. Gender-based discrimination and violence

107. The Inter-American Commission's 2012 Report highlighted the prevalence of violence against women in Jamaica. The 2012 Report indicated that between 2005 and 2008 the 13 offices of the Victim Support Unit ("VSU") of Jamaica received 22,739 cases of domestic violence, of which 13,979 were women and girls.²²² Figures on sexual violence against women presented in the 2012 Report state that official statistics for the 2009-2010 period indicated that 685 rapes were reported, but only 263 of them were "cleared up."²²³ There is concern that since sexual violence often goes unreported, the number of incidents is higher than what is recorded.²²⁴

108. More recent reports indicate that violence against women remains a worrying concern. For example, in June 2013 the United Nations Economic, Social and Cultural Rights Committee expressed its profound concern at high rates of domestic and sexual violence in Jamaica.²²⁵

109. Efforts to address discrimination and violence against women are ongoing. There has been some improvement in the level of political participation by women in Jamaica, specifically access to decision-making positions.

110. The Jamaican government currently provides shelter to trafficking victims and there is one independently operated shelter for victims of domestic violence.²²⁶ In addition, shelter solutions are often utilized for victims in cases of emergencies or immediate danger.²²⁷

111. The BWA prepared a National Strategic Plan to Eliminate Gender-Based Violence Against Women (NSAP-GBV), with support from UN Women.²²⁸ The program is designed as a multi-sector plan to raise awareness concerning gender-based violence and provide guidance for the development and implementation of programs to address this problem, and to facilitate a holistic approach towards the elimination of gender-based violence in Jamaica.²²⁹

²²² "Domestic violence statistics alarming", Jamaica Gleaner, July 21, 2008, available at: <http://jamaica-gleaner.com/gleaner/20080721/lead/lead6.html>. in IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, August 10 2012, para 220, available at: <http://www.oas.org/en/iachr/docs/pdf/jamaica2012eng.pdf>

²²³ Jamaica Constabulary Force, Crime Statistics, 2009-2010 Annual Report, available at <http://www.jcf.gov.jm/sites/default/files/ANNUAL%20REPORT%202009%20TO%20%202010.pdf>. in IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, August 10 2012, para 218, available at: <http://www.oas.org/en/iachr/docs/pdf/jamaica2012eng.pdf>

²²⁴ Jamaica Constabulary Force, Crime Statistics, 2009-2010 Annual Report, available at <http://www.jcf.gov.jm/sites/default/files/ANNUAL%20REPORT%202009%20TO%20%202010.pdf>. in IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, August 10 2012, para 218, available at: <http://www.oas.org/en/iachr/docs/pdf/jamaica2012eng.pdf>

²²⁵ United Nations Economic and Social Council (Committee on Economic, Social and Cultural Rights), "Concluding observations on the third and fourth periodic report of Jamaica, adopted by the Committee at its fiftieth session (29 April-17 May 2013)", E/C.12/JAM/CO/3-4, May 17, 2013, at 6.

²²⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²²⁷ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²²⁸ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²²⁹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.; Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 8.

112. The issue of gender-based violence is also addressed through various programs and initiatives of the VSU.²³⁰ The services include a therapeutic counseling intervention program, an Overcomers' Programme for sexual traumatized victims, as well as technical and referral services for walk-in victims of sexual abuse and domestic violence including mediation, rights advice and advocacy.²³¹ The VSU operates in all 14 parishes and is staffed by 35 technical officers, all of whom have a minimum training to the level of a Bachelor's degree in counseling, psychology or social work.²³² Staff is also involved in ongoing training related to human rights, restorative justice and stress management, advanced applied psychology, and Children in Court training.²³³

113. The VSU also conducts various training and capacity building programs for members of the security services, prosecutorial services, judiciary, doctors and other medical professionals, teachers, and guidance counselors.²³⁴

114. The BWA signed a Memorandum of Understanding ("MoU") in September 2013, which guides the operations of the Jamaica Crime Observatory ("JCO") in the Ministry of Justice.²³⁵ The MoU reaffirms the State's commitment to facilitate data-collection and data-sharing protocols among key stakeholders and is intended to operationalize the JCO. It is expected that this initiative would assist the BWA in the following areas: the collection of sex-disaggregated data; the establishment of links between the victim and perpetrator as a way to measure the occurrences of Intimate Partner Violence; and the facilitation of evidence-based policy-making and violence prevention strategies.²³⁶

115. In July 2013, the CEDAW Committee made a number of recommendations to the State to address violence against women and girls. Some of the recommendations included strengthening the capacity of the BWA, collecting and compiling comprehensive data on violence against women, and strengthening victim assistance and support programs.²³⁷ Following on from these recommendations, in September 2013 the State expressed its commitment to CEDAW and the implementation of recommendations of the CEDAW Committee formulated through a plan to draft legislation dealing with sexual harassment.²³⁸ A draft Sexual Harassment Bill was being prepared to go before Cabinet.²³⁹ In the March 2014 hearing, the State indicated

²³⁰ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 9.

²³¹ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 9.; IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²³² Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 9.

²³³ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 9.

²³⁴ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 9.

²³⁵ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 6.

²³⁶ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 6.

²³⁷ Office of the Prime Minister Communications Unit, "Information Minister Outlines Progress in Eliminating Discrimination Against Women," Jamaica Information Service", September 19, 2013, available at: <http://jis.gov.jm/information-minister-outlines-progress-in-eliminating-discrimination-against-women/>

²³⁸ Office of the Prime Minister Communications Unit, "Information Minister Outlines Progress in Eliminating Discrimination Against Women," Jamaica Information Service", September 19, 2013, available at: <http://jis.gov.jm/information-minister-outlines-progress-in-eliminating-discrimination-against-women/>

²³⁹ Jamaica Gleaner. "Draft Of Sexual Harassment Bill Ready," March 10, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140310/news/news2.html>; IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

that the Bill was in the Office of the Prime Minister and that discussions remain ongoing.²⁴⁰ The State pledged to bring news of the Bill's progress to the IACHR when it becomes available.²⁴¹

116. The State is examining the possibility of using special temporary measures or quotas to further address gender inequality issues.²⁴² Further steps are being taken to introduce legislation on sexual harassment and to implement the National Strategic Action Plan to eliminate gender-based violence.²⁴³

117. The Inter-American Commission welcomes all initiatives on the part of the Jamaican State to advance toward the social inclusion of women, as well as measures against gender-based discrimination and violence. Integral policies that include all agencies of government, as well as more extensive campaigns to create a culture of inclusion and non-discrimination are good practices to be considered by the State in its future endeavors in this area.

VII. RIGHTS OF CHILDREN

118. In the 2012 Report the IACHR made the following recommendations on the rights of children to the Jamaican State:

- a. Develop a comprehensive national strategy for children, with particular attention and priority to marginalized and disadvantaged groups of children, which allocates adequate resources for its implementation.
- b. Implement initiatives of prevention and response to all forms of violence and sexual assault against children, which include the investigation, prosecution and punishment of such acts; and the creation of mechanisms to facilitate that children who have been victims of violence may be heard and present claims.
- c. Enact legislation that prohibits all forms of corporal punishment against children, in all settings, within the family, schools, alternative care institutions and detention facilities, places where children work and within the community.
- d. Incorporate an integral awareness of the rights of the child in designing public policies applicable to children, with particular emphasis on the eradication of corporal punishment in public institutions, such as detention centers, shelters, orphanages, hospitals, psychiatric institutions, schools and military schools, among others.
- e. Ensure that the deprivation of liberty of children is applied only as a measure of last resort, for the minimum period necessary, and limited to strictly exceptional cases, in a manner consistent with the duty of special protection of the child guaranteed in the American Convention, the Principles and Best Practices for the protection of persons deprived of liberty in the Americas, and the United Nations Convention on the Rights of the Child.

²⁴⁰ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁴¹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁴² IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁴³ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

- f. Ensure that children are detained in adequate, sanitary facilities and not held with adults, and that those detained because they are in need of protection are separated from those convicted or accused of crimes.
- g. Provide education and skills-training to children in detention and maintain programs to help them to successfully reintegrate into society.
- h. Address the psychological and medical needs of all children held in institutions throughout the country, including periodic assessments and judicial review of the grounds for their presence in such institutions.

A. Comprehensive national strategy

119. The State introduced initiatives such as the National Plan of Action for Child Justice 2010-2014 and the National Child Diversion Policy for the Re-Integration of School Aged Mothers (November 2013). However, the IACHR was informed that there is still not a single, comprehensive national strategy implemented by responsible agencies that is geared toward children.²⁴⁴

B. Violence and sexual assault against children

120. The State has been responsive to the implementation of initiatives geared toward prevention and response to all forms of violence and sexual assault against children as it related to the creation of mechanisms to facilitate that children who have been victims of violence may be heard and present claims. Under the practice in effect, the Department of Correctional Services (“DCS”) collects statements regarding allegations of sexual and physical abuse and refers the matter to the Inspectorate Unit within the Department.²⁴⁵ In keeping with the Child Protection Act, the DCS submits all cases of alleged abuse to the Office of the Children’s Registry.²⁴⁶

121. According to the information received by the IACHR, safety boxes were placed in juvenile remand centers and correctional facilities to provide juveniles with a confidential method of communicating their concerns with the Office of the Children’s Advocate (“OCA”).²⁴⁷ The boxes were placed at Metcalfe Street Juvenile Remand Centre, Horizon Adult Remand Centre, Fort Augusta Adult Correctional Facility, Rio Cobre Juvenile Correctional Centre, Hilltop Juvenile Correctional Centre and Diamond Crest Juvenile Correctional Centre.²⁴⁸

122. Jamaicans for Justice has reported that children in state care are still vulnerable. JFJ confirmed that it received reports in February 2014 of conditions in Homestead Place of Safety that revealed gross neglect, random violence, mismanagement and lack of accountability.²⁴⁹ JFJ also revealed four separate incidents of wards of the state who had been assaulted and repeatedly raped, one whose death had not been

²⁴⁴ Jamaicans for Justice, Update: IACHR Report on the Situation of Human Rights in Jamaica (2012), March 2014, at para 101.

²⁴⁵ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 12.

²⁴⁶ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 12.

²⁴⁷ Jamaica Gleaner, “Wards of state get safety boxes,” March 27, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130327/lead/lead6.html>

²⁴⁸ Jamaica Gleaner, “Wards of state get safety boxes,” March 27, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130327/lead/lead6.html>

²⁴⁹ Jamaicans for Justice Press Release, “JFJ Calls on the Government to Provide Children with Effective Care, Support and Protection”, April 2, 2014, available at: <http://jamaicansforjustice.org/2014/04/02/jfi-press-release-jfi-calls-on-the-government-to-provide-children-with-effective-care-support-and-protection/>

reported to family members, and another who had been made homeless.²⁵⁰ The IACHR stresses the need for an ongoing monitoring process for children who have been victims of violence.

123. Despite improvements to address the issue of violence and sexual assault of children in State care, JFJ has highlighted that there is still no robust legislative regulation of these institutions which leads to continued abuse of children.²⁵¹ From 2009-2012, there were 1,453 critical incidents²⁵² and since the IACHR's 2012 Report to present, there have been almost 2,000 such incidents. Based on current data, over 250 incidents were of a sexual nature, including sexual abuse, assault and rape, which constitute a substantial portion of the total.²⁵³

124. Civil society organizations have noted that children come into State care from very traumatic, exploitative situations, sometimes as a result, they display sexually maladaptive behavior and are high risk to engage in sexually predatory behavior.²⁵⁴ They warned that despite the Inter-American Commission's grant of a precautionary measure²⁵⁵ in a situation involving the sexual abuse of a minor in a State-run children's home, that the State has not taken adequate steps to address the growing problem of sexually predatory activity within children's homes.²⁵⁶

125. According to information received from civil society organizations in the October 2014 hearing, children's homes lack the capacity to deal with these issues.²⁵⁷ The Inter-American Commission was informed that caregivers lack training, as well as financial and human support from the government to address the needs of child wards. Jamaica's oldest children's home closed this year due to insufficient support from the government, among other factors. As such, NGOs and private charities have had to endeavor to train and provide caregivers with the support they needed in caring for children. The type of support provided included training, financial assistance and also the provision of physical goods, lunch money and food.²⁵⁸

126. In the course of the above-mentioned hearing, the IACHR was also informed that when NGO intervention highlights the failure of the State, the State has reacted aggressively.²⁵⁹ In response to the only targeted sexual and reproductive rights program inside children's homes in Jamaica (carried out by JFJ) for a

²⁵⁰ Jamaicans for Justice Press Release, "JFJ Calls on the Government to Provide Children with Effective Care, Support and Protection", April 2, 2014, available at: <http://jamaicansforjustice.org/2014/04/02/jfj-press-release-jfj-calls-on-the-government-to-provide-children-with-effective-care-support-and-protection/>

²⁵¹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁵² IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁵³ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁵⁴ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁵⁵ On September 22, 2003, the Inter-American Commission granted precautionary measures on behalf of the seven-year-old child known for the purposes of the proceeding as "Michael Roberts" and whose real name will be kept under seal to protect his identity. The information available indicates that Michael Roberts has been a victim of sexual abuse while at children's homes under the Department of Children and Family Services of Jamaica's Ministry of Health, and that even after the abuse was detected, he was the victim of omissions and negligence for lack of adequate treatment. Available at: <http://www.cidh.org/medidas/2003.eng.htm>

²⁵⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁵⁷ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁵⁸ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁵⁹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

period of eight months in 2012-2013), JFJ was allegedly threatened with legal action and possible criminal prosecution for working with groups that the State has failed to help for years.²⁶⁰ According to the organizations represented at the March 2014 Jamaica hearing, this stems from a national non-recognition of sexual and reproductive rights as human rights.

127. Representatives of civil society also expressed that the threat of prosecution against JFJ has made comprehensive sex education even more difficult to pursue, and that groups endeavoring to educate children have been targeted. Jamaica's most recent UNJS report prioritizes programming with youth and says that 15-24 year olds are at a higher risk of contracting HIV.²⁶¹ Civil society organizations have stated that conflating science-based sex education with so-called 'homosexual indoctrination', has made it very difficult for them to provide education which supports marginalized youth to assess and reduce their risk for HIV and STI's and early pregnancies, which are serious problems within this cohort.²⁶²

128. JFJ has specifically mentioned that it has been targeted by the Minister of Youth and Culture, who they allege has a history of suggesting legal action against JFJ for advocacy work.²⁶³ JFJ has specifically reported that twice in the past two years, the Minister of Youth and Culture made public remarks that JFJ would be (or is intended to be) referred to the Attorney General's Office.²⁶⁴ In the view of the organizations that informed the IACHR, this has led to increased resistance to sex education initiatives across the country.²⁶⁵

129. The IACHR expresses grave concern over the reports of threats made to civil society organizations in the execution of their work and will continue to monitor the situation.²⁶⁶ It urges the State to maintain an enabling environment for citizen advocacy.²⁶⁷

C. Corporal punishment

130. The IACHR was pleased to learn of the Law Reform (Flogging and Whipping) (Abolition) Act of March 2013 that abolishes flogging and whipping as a penalty for any offence and makes consequential amendments of law.²⁶⁸ This is an important step forward, however, there is no clear correlation between this legislation and corporal punishment used against children.

²⁶⁰ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁶¹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁶² IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁶³ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁶⁴ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014; In the October 28, 2014 hearing during the 153rd Regular Period of Sessions, Jamaicans for Justice ("JFJ") informed the IACHR that leading up to the precautionary measure granted by the IACHR (PM 137/13 - Girls Deprived of Liberty in adult detention centres), JFJ launched substantial domestic advocacy and an online petition. Right after publishing its online petition, JFJ stated that it was referred publicly to the Attorney General's Office for maligning the State's integrity.

²⁶⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁶⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁶⁷ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁶⁸ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

D. Public policies

131. The State has sought to better incorporate an integral awareness of the rights of the child in designing public policies applicable to children. The Child Development Agency (CDA) launched a poster competition open to children across the island under the theme 'Protecting Children, Transforming Lives, Securing the Future' which ran from June to September 2014.²⁶⁹ The CDA seeks to promote child participation and to engage children through art, on key issues surrounding child protection and the role of the CDA itself.²⁷⁰

E. Children deprived of liberty

132. The Jamaican government has informed the IACHR that it has taken concrete steps to address the issue of children held in State custody and the government wishes to ensure that the rights of all children, enshrined in the Child Care and Protection Act, are upheld. The government reports that it acts to ensure that children are housed in keeping with international standards and best practices. To this end, special attention has been paid to ensuring the adequacy of facilities and the provision of education, medical care, and ensuring that caregivers are properly trained.²⁷¹

133. In the March 2014 hearing, civil society organizations mentioned the challenges in data collection for children in conflict with the law and children detained in police lock-ups.²⁷² Since that March 2014 hearing, information had been gathered under the Access to Information Act. Statistics compiled by JFJ have demonstrated that there has been extended detention of children in police lock-ups, ranging from 2-140²⁷³ days in police custody.²⁷⁴ JFJ noted that from 2012 until present, children deprived of liberty spend an average of eight days in a police lock-up. This includes children who have been detained on the ground of care and protection, children deemed uncontrollable, and children in conflict with the law.²⁷⁵

1. Detention as a measure of last resort

134. Since 2012, over 300 children have been detained in a police lock-up for at least two days after being deemed "uncontrollable" or in need of care and protection.²⁷⁶ On August 13, 2013, the Jamaican Cabinet approved legislative changes for the removal of the "uncontrollable" behavior label from children under recommendation from the Inter-Ministerial Task Force on Children.²⁷⁷ This is a welcome initiative

²⁶⁹ Child Development Agency Press Release, "CDA'S CHILDREN'S POSTER COMPETITION", July 18, 2014, available at: <http://go-jamaica.com/pressrelease/item.php?id=3504>

²⁷⁰ Child Development Agency Press Release, "CDA'S CHILDREN'S POSTER COMPETITION", July 18, 2014, available at: <http://go-jamaica.com/pressrelease/item.php?id=3504>

²⁷¹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁷² IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁷³ According to information gained under the Access to Information Act and provided to the IACHR by Jamaicans for Justice ("JFJ"), a juvenile on a charge for murder was detained in police custody for a period of 140 days at the Freeport Police Station, St James. The statistical data provided by JFJ provides information on the length of time spent in detention by juveniles in police station across the country, for care and protection to more violent and serious offences, including murder, rape, and robbery with aggravation.

²⁷⁴ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁷⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁷⁶ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁷⁷ Nelson, Jaevion, "'Controlling' the Uncontrollable Child," Jamaica Gleaner, September 5, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130905/cleisure/cleisure3.html>; IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

from the State since civil society organizations had brought to the IACHR's attention in the March 2014 hearing that being deemed "beyond control" or "uncontrollable" was the primary reason for children entering the justice system.²⁷⁸

135. The IACHR welcomes an approach where these children are neither institutionalized nor treated as delinquents. The IACHR urges the State to adopt more creative solutions in targeting children once deemed uncontrollable, including more in depth approaches aimed at addressing both the causes and the consequences for the child and the family.²⁷⁹ As the Inter-American Commission has consistently affirmed, the deprivation of liberty of a child must be treated as a very exceptional measure, used only as a last resort, and for the shortest possible period.

2. Detention in adequate, sanitary facilities and not held with adults

136. There were steps to ensure that children are detained in adequate, sanitary facilities and not held with adults and that those detained because they are in need of protection are separated from those convicted or accused of crimes. In May 2013, the Minister of Youth and Culture announced that JA\$75million²⁸⁰ had been set aside to retrofit a number of police stations across Jamaica to house juveniles who were taken into custody.²⁸¹ The decision to retrofit police stations is based on recommendations by the Inter-Ministerial Working Group on Children in Detention that was approved by Cabinet.²⁸²

137. However, civil society organizations remain concerned that police lock-ups would not be appropriate and adequate for children.²⁸³ The IACHR for its part reaffirms that while the State is attempting to construct cells to hold children in police lock-ups as an interim measure, that measure is not an appropriate solution.²⁸⁴ The IACHR has noted that while it is laudable that the State is making a concerted effort to resolve some of the very difficult issues regarding children in detention, the State's focus should be on care, protection and rehabilitation.²⁸⁵

138. Civil society organizations have noted that the Horizon Adult Remand Centre no longer holds juvenile females, a welcome measure to separate adult and juvenile detainees.²⁸⁶ All children who were held in Horizon Adult Remand Centre and the Fort Augusta Adult Correctional Centre were removed to the South

²⁷⁸ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁷⁹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁸⁰ Approximately US\$650,000.

²⁸¹ Reid, Tyrone, "Jail Juveniles For 48 Hours Max! UNICEF Gives Guarded Approval to Retrofitting Lock-Ups To House Children In Conflict With The Law," Jamaica Gleaner, June 16, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130616/lead/lead10.html>

²⁸² Reid, Tyrone, "Jail Juveniles For 48 Hours Max! UNICEF Gives Guarded Approval to Retrofitting Lock-Ups To House Children In Conflict With The Law," Jamaica Gleaner, June 16, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130616/lead/lead10.html>

²⁸³ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁸⁴ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁸⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁸⁶ Ministry of National Security Press Release, "No more female juveniles at Horizon Adult Remand Centre – Bunting", July 5, 2013, available at: <http://go-jamaica.com/pressrelease/item.php?id=2276>

Camp Road Juvenile Correctional Centre on September 24, 2013.²⁸⁷ The South Camp facility was adjusted to reflect arrangements for minor girls including leaving the grille to each door open, providing common areas for recreational activities, and providing furnishing and décor that reflect a more home-like setting.²⁸⁸

139. However, civil society organizations have expressed concern that many adult correctional institutions which the IACHR found to be inadequate and inhumane for housing children have not been redesigned to house juvenile offenders. This goes against the 2013 precautionary measures granted by the Commission that found that adult facilities were inhumane and illegal institutions to house children.²⁸⁹ For example, on February 20, 2014, five boys charged with serious crimes and planning to escape were transferred from Metcalfe Street Secure Juvenile Remand Centre to the Horizon Adult Remand Centre.²⁹⁰

3. Separation of those detained because they are in need of protection from those convicted or accused of crimes

140. The IACHR was informed that, as far as possible, girls at the South Camp facility with critical psychological and psychiatric needs are placed in specialized dorms where they can be closely monitored and supervised.²⁹¹ Those posing behavioral problems are also placed in separation dorms to facilitate a behavior modification program.²⁹² In a similar fashion, girls on remand are separated from those with Correctional Orders.²⁹³ The State admits that since the South Camp facility is not purpose-built there still remain instances where girls are not ideally placed according to their specific needs.²⁹⁴

141. According to the State, all girls have relocated to a Youth Correction Facility in South Camp, Kingston. The State also related that the juveniles that remain in lock-ups are there because they are currently facing trial and in remand because of flight risk.²⁹⁵ The State informed the IACHR that there is a plan to build a new correctional facility and to improve the facilities in worst establishments.²⁹⁶

4. Provision of education and skills-training to children in detention and maintain programs to help them to successfully reintegrate into society

²⁸⁷ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 10; IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁸⁸ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 10; IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁸⁹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

²⁹⁰ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

²⁹¹ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 10.

²⁹² Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 10.

²⁹³ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 10.

²⁹⁴ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 10.

²⁹⁵ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 10.

²⁹⁶ Permanent Mission of Jamaica to the Organization of American States, "IACHR Jamaica-Hearing Report", March 27, 2014, at 10.

142. The State reported having provided education and skills-training to children in detention and maintain programs to help them successfully reintegrate into society. There are now greater education opportunities for children in state custody. In May 2014 there were 26 juveniles across the island sitting Caribbean Examination Council (CXC) examinations.²⁹⁷ The Reform of Secondary Education (ROSE) curriculum is also being implemented at the South Camp facility.²⁹⁸ Based on assessments done on admission, wards are taught using the curriculum suitable for their specific academic levels.²⁹⁹ Life skills such as the Art for Life and innovative Sports and Youth Initiative programs are implemented at various institutions in order to give support to education components offered to wards.³⁰⁰

143. The DCS provided education services to girls at the South Camp facility. In February 2014, three additional teachers were employed to teach information technology, mathematics, and remedial reading.³⁰¹ As of March 2014, the student/teacher ratio stood at 8 teachers for 38 students.³⁰² Presently a home economics center is being built to offer skills in home management and food preparation.³⁰³

144. The Armadale Juvenile Correctional Centre, which was a juvenile facility for girls before it closed because of a fire, will now become a skills training center.³⁰⁴ The groundbreaking ceremony was held in June 2014 and the skills training center is scheduled to open later in the year.³⁰⁵ The center is expected to offer training in areas such as computer repairs, woodwork and furniture making, and general construction and will assist in limiting travel for persons who once had to acquire such skills training further afield.³⁰⁶

145. Aside from these positive initiatives, JFJ reported that the National Education Inspectorate (“NEI”) of Jamaica in its March 2013 report found that all four juvenile facilities in Jamaica³⁰⁷ were failing to provide proper education to children, in breach of the Correction Act and international law.³⁰⁸ According to the information provided, the remand and correctional facilities operated by the DCS have failed to provide

²⁹⁷ Smith-Edwards, Alecia, “Juvenile Remandees Receiving Better Access to Education,” Jamaica Information Service, May 22, 2014, available at: <http://jis.gov.jm/juvenile-remandees-receiving-better-access-education/>

²⁹⁸ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 11.

²⁹⁹ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 12.

³⁰⁰ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 12.

³⁰¹ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 11.

³⁰² Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 11.

³⁰³ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 12.

³⁰⁴ Dixon, Renae, “Armadale correctional facility to become skills training centre,” Jamaica Observer, June 15, 2014, available at: http://www.jamaicaobserver.com/regional/Armadale-correctional-facility-to-become-skills-training-centre_16886769

³⁰⁵ Dixon, Renae, “Armadale correctional facility to become skills training centre,” Jamaica Observer, June 15, 2014, available at: http://www.jamaicaobserver.com/regional/Armadale-correctional-facility-to-become-skills-training-centre_16886769

³⁰⁶ Dixon, Renae, “Armadale correctional facility to become skills training centre,” Jamaica Observer, June 15, 2014, available at: http://www.jamaicaobserver.com/regional/Armadale-correctional-facility-to-become-skills-training-centre_16886769

³⁰⁶ Dixon, Renae, “Armadale correctional facility to become skills training centre,” Jamaica Observer, June 15, 2014, available at: http://www.jamaicaobserver.com/regional/Armadale-correctional-facility-to-become-skills-training-centre_16886769

³⁰⁷ The four facilities that were assessed under the National Education Inspectorate (“NEI”) Report were Diamond Crest Juvenile Correctional Centre, Hill Top Juvenile Correctional Centre, Metcalfe Street Secure Juvenile Remand Centre, and Rio Cobre Juvenile Correctional Centre.

³⁰⁸ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

sufficient education to the children in their care.³⁰⁹ It goes on to say that the National Education Inspectorate's report identified a total of six focus areas and all four facilities identified in the report failed in terms of curriculum, teacher support, and ward development.³¹⁰ Additionally, all four facilities failed on overall effectiveness.³¹¹

146. The State has held that since the publishing of the NEI's report, the DCS has taken measures to assess the educational level of wards (including those on remand) upon entry to juvenile correctional facilities.³¹² Additionally, the State has underscored that there are additional and more qualified educators employed within juvenile correctional facilities, for example, there are now 28 trained teachers up from ten when the NEI assessment was completed.³¹³ Other changes include curriculum and an expansion of the number of subjects taught.³¹⁴

147. In light of this information, the Inter-American Commission continues to encourage the State to provide education and skills-training to children in detention and maintain programs to help them to successfully reintegrate into society.

³⁰⁹ Malcolm, Rodje, "Locked Away From Learning - Education in Juvenile Facilities Failing", Jamaica Gleaner, May 14, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140514/cleisure/cleisure3.html>

³¹⁰ Malcolm, Rodje, "Locked Away From Learning - Education in Juvenile Facilities Failing", Jamaica Gleaner, May 14, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140514/cleisure/cleisure3.html>

³¹¹ Malcolm, Rodje, "Locked Away From Learning - Education in Juvenile Facilities Failing", Jamaica Gleaner, May 14, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140514/cleisure/cleisure3.html>

³¹² Smith-Edwards, Alecia, "Juvenile Remandees Receiving Better Access to Education", Jamaica Information Service, May 22, 2014, available at: <http://jis.gov.jm/juvenile-remandees-receiving-better-access-education/>

³¹³ Smith-Edwards, Alecia, "Juvenile Remandees Receiving Better Access to Education", Jamaica Information Service, May 22, 2014, available at: <http://jis.gov.jm/juvenile-remandees-receiving-better-access-education/>

³¹⁴ Smith-Edwards, Alecia, "Juvenile Remandees Receiving Better Access to Education", Jamaica Information Service, May 22, 2014, available at: <http://jis.gov.jm/juvenile-remandees-receiving-better-access-education/>

F. Medical and psychological needs of children

148. The IACHR was informed by civil society organizations that alarming critical incidents involving children still occur in correctional facilities.³¹⁵ It was reported that between 2010-2013, there were 67 attempted suicides from child wards in correctional facilities.³¹⁶

149. Through grant funding from the European Union (“EU”) and UNICEF on, December 2012 the Jamaican government launched a pilot project aimed at increasing its efforts to safeguard the welfare of children in state care and those who come into contact with the justice system.³¹⁷ The program is called ‘Reducing the Juvenile Population in State-supported Institutions in Jamaica (RJPSI)’ and ran until July 2015.³¹⁸ It consisted of two components: one was a mobile health service called ‘Smiles Mobile’ for children in residential care facilities and juvenile correctional centers. The health services provided psychological assessment and treatment of children in Kingston, St Andrew and St Catherine and were delivered by a psychiatrist, two social workers, and a psychologist; and a national diversion campaign for children in conflict with the law targeting children in St Catherine, Kingston and St Andrew, Clarendon and St James. The services provide children with an alternative to judicial proceedings and incarceration.³¹⁹

150. The Therapeutic Milieu provides group counseling at the South Camp facility provided by Psychiatric Aids and Mental Health Nurses.³²⁰ Discussions are being held to solicit further support from the Psychological Association of Jamaica.³²¹ Additional staff members are also being recruited for the South Camp facility based on criteria developed by the DCS including prior work experience with children, high levels of maturity, and post-school leaving qualifications.³²²

151. The State addressed the psychological and medical needs of children held in institutions throughout the country but there is no information as to whether this included periodic assessments and judicial review of the grounds for their presence in such institutions. In October 2013, the Jamaican Cabinet approved the Board of Visitors, which acts as an oversight body and will be responsible for monitoring the diet and health of juveniles, the maintenance and condition of correctional and remand centers, and monitoring matters relating to the safety and well-being of minors in these facilities.³²³ On each board there will be a doctor, an attorney with five years’ experience and a psychologist.³²⁴

³¹⁵ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

³¹⁶ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

³¹⁷ Patterson, Chris, “Gov’t Launches Project to Protect Children in State Care”, Jamaica Information Service, November, 28, 2013, available at: <http://jis.gov.jm/govt-launches-project-protect-children-state-care/>

³¹⁸ Patterson, Chris, “Gov’t Launches Project to Protect Children in State Care”, Jamaica Information Service, November, 28, 2013, available at: <http://jis.gov.jm/govt-launches-project-protect-children-state-care/>

³¹⁹ Patterson, Chris, “Gov’t Launches Project to Protect Children in State Care”, Jamaica Information Service, November, 28, 2013, available at: <http://jis.gov.jm/govt-launches-project-protect-children-state-care/>; Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 11.

³²⁰ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 11.

³²¹ Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 11.

³²² Permanent Mission of Jamaica to the Organization of American States, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 11.

³²³ Reynolds, Jerome, “Oversight Bodies Established for Juvenile, Correctional and Remand Centres,” Jamaica Gleaner, October 10, 2013, available at: <http://jamaica-gleaner.com/latest/article.php?id=48525>

³²⁴ Reynolds, Jerome, “Oversight Bodies Established for Juvenile, Correctional and Remand Centres,” Jamaica Gleaner, October 10, 2013, available at: <http://jamaica-gleaner.com/latest/article.php?id=48525>

152. The Inter-American Commission takes note of this situation, and stresses that continuous monitoring is still required, in light of the alarming critical incidents that still occur in these correctional facilities.

VIII. DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

153. In the 2012 Report the IACHR made the following recommendations to the State regarding discrimination based on sexual orientation and gender identity:

- a. Enact legislative reforms designed to bring Jamaica's laws into conformity with the American Convention on Human Rights, including repealing laws criminalizing homosexual conduct; enacting anti-discrimination legislation to protect the human rights and equal treatment of LGBTI and HIV/AIDS infected persons; and criminalizing hate crimes based on homophobia. Modify laws which allow police broad discretionary power to arrest and detain individuals without warrant or cause.
- b. Take urgent action to prevent these human rights abuses, including through the adoption of public policy measures and campaigns against discrimination based on sexual orientation. Government officials must take measures to defend sexual minorities from discrimination and stigmatization, and adopt policies that ensure that LGBTI persons may fairly compete for positions within the government.
- c. Train all criminal justice officials on international human rights standards and the rights contained in the American Convention as they apply to LGBTI persons, and nondiscrimination. Give those within the criminal justice system information and training on issues around sexuality, gender identity, and HIV/AIDS.
- d. Give specific training to police officials regarding international human rights standards and non-discrimination, as well as issues surrounding sexual orientation, gender identity, gender discrimination, and HIV/AIDS. Ensure training occurs at all ranks of police officials. Create an independent body to field, investigate, and effectively sanction police abuses and charges of discrimination.
- e. Investigate thoroughly and impartially all acts of discrimination based on sexual preference, especially acts of violence that result in violations of the rights to physical integrity and to life.
- f. Train healthcare workers and providers on issues around sexuality, gender identity, and how these play a role in exposing a person to HIV/AIDS. Ensure that healthcare workers are instructed on the right to privacy and keeping medical information confidential. Develop a nationwide initiative to sanction those healthcare workers who refuse to treat LGBTI Jamaicans or who violate the privacy of their patients.

A. Legislation linked to the rights of LGBT persons³²⁵

154. Section 76 of the Offences against the Person Act establishes that “[w]hosoever shall be convicted of the abominable crime of buggery [anal intercourse] committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.” Section 77 criminalizes the attempt to commit the crime of “buggery”, while section 79 criminalizes as a misdemeanor the commission by a man, in public or private, of “any act of gross indecency with another male person”.³²⁶ The IACHR notes that the State has not adopted any measures to repeal the sections of the 1864 Offences against the Person Act that criminalize same sex intimacy between consenting adults, despite recommendations issued in the regard by the IACHR³²⁷ as other international human rights monitoring bodies.

155. The UN Human Rights Committee has recommended the State of Jamaica to repeal its legislation criminalizing same sex intimacy, and that it should investigate and sanction acts of violence against LGBT persons. In this regard it affirmed:

The State party should amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity. The State party should also decriminalize sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant and put an end to prejudices and the social stigmatization of homosexuality. In this regard, the State party should send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation, and should ensure that individuals, who incite violence against homosexuals, are investigated, prosecuted and properly sanctioned.³²⁸

156. According to the IACHR, legislation criminalizing same sex consensual intimacy in Jamaica “may contribute to an environment that, at best, does not condemn, and at worst condones discrimination, stigmatization and violence” against LGBT persons.³²⁹ In its 2014 report on Jamaica, Human Rights Watch indicated that “[p]rosecutions under these laws are rarely pursued. Nevertheless the laws have a real and negative impact. Criminalizing sexual intimacy between men offers legal sanction to discrimination against sexual and gender minorities, and in a context of widespread homophobia, gives social sanction to prejudice and helps to create a context in which hostility and violence is directed against LGBT people.”³³⁰ The IACHR has received information that points that although the Offences against the Person Act does not directly mention trans persons, gender non-conforming persons, particularly given their visibility, experience violence and discrimination.³³¹

157. The IACHR remains concerned about these laws, even if not enforced, particularly because of their negative impact on the rights of LGBT persons to life, personal integrity, personal liberty, privacy, access to health and other services.³³² The IACHR has also received information pointing that criminalization

³²⁵ The IACHR did not receive specific information pertaining to the rights of intersex persons in Jamaica. Therefore, this chapter will focus on the rights of lesbian, gay, bisexual and trans (LGBT) persons.

³²⁶ Offences Against the Person Act, operational since January 1, 1864. Last amendment in 2010.

³²⁷ See IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144. Doc 12. 10 August 2012, paras. 263 and ff.

³²⁸ UN HRC, Concluding Observations, Jamaica, CCPR/C/JAM/CO/3, 17 November 2011.

³²⁹ See IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144. Doc 12. 10 August 2012, para. 271.

³³⁰ HRW, “Not Safe at Home: Violence and Discrimination against LGBT People in Jamaica”, October 2014, p. 10, available at: http://www.hrw.org/sites/default/files/reports/jamaica1014_ForUpload_1.pdf.

³³¹ HRW, “Not Safe at Home: Violence and Discrimination against LGBT People in Jamaica”, October 2014, p. 10, available at: http://www.hrw.org/sites/default/files/reports/jamaica1014_ForUpload_1.pdf. Information also received in the context of public hearings regarding Jamaica.

³³² IACHR, Press Release No. 35A/14, “Report on the 150th Session of the IACHR”, May 13, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/035A.asp

legislation has a negative impact on the defense for human rights, restricts access to justice and fuels intolerance.³³³ In this trend, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions believes that decriminalizing “matters of sexual orientation” would greatly contribute to overcoming the social stigmatization of members of sexual minorities, and thereby curb impunity for human rights violations directed against these persons.³³⁴ Former UN Special Rapporteur on the right to health, Anand Grover declared that “criminalization may not be the sole reason behind stigma, but it certainly perpetuates it, through the reinforcement of existing prejudices and stereotypes”³³⁵.

158. Civil society organizations have called out the State’s unwillingness to confront legislative review despite recommendations to do so.³³⁶ In response to this, the State has expressed that Parliament has not revised the OAPA given its controversial nature and the lack of support from society. The State contends that the majority of Jamaicans do not approve of the “homosexual lifestyle”, especially where it is expressed publicly, and modifying the law would be controversial.³³⁷

159. The State noted that in 2011 when the Charter of Rights was being considered, the question of “rights for gay persons” was discussed, and the majority sentiment among Parliamentarians was that Jamaica was not ready for the very significant cultural change that would be required to do away with some of the laws concerning homosexuality.³³⁸ In October 2014, a Jamaican newspaper did a survey according to which 91% of Jamaicans are against any change in the Offences Against the Person Act as far as it concerns sexual activity between persons of the same sex.³³⁹

160. In a similar vein, the IACHR was informed of a national survey that was conducted regarding attitudes and perceptions of Jamaicans towards same sex relationships, respondents were questioned about their views of the buggery law.³⁴⁰ The majority of respondents (76.7%) supported the law and only 21.3% said they would support an amendment allowing for consensual sex between adults in private.³⁴¹ Although 33% of respondents did not offer a response when questioned as to what was their greatest fear if the law was amended, the majority of those who responded (12.2%) indicated that their greatest fear is that homosexuality would become mainstream.³⁴²

³³³ IACHR, Press Release No. 131A/14, Report on the 153rd Session of the IACHR, December 29, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/131A.asp

³³⁴ *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, E/CN.4/2000/3, 25 January 2000, para. 116.

³³⁵ UN, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, April 27, 2010, para. 22.

³³⁶ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

³³⁷ Permanent Mission of Jamaica to the OAS, “IACHR Jamaica-Hearing Report”, March 27, 2014, at 14; IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

³³⁸ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

³³⁹ Caribbean 360, “Jamaica Gleaner poll: Majority of Jamaicans against removing buggery laws”, October 7, 2014, available at: <http://www.caribbean360.com/news/jamaica-gleaner-poll-majority-of-jamaicans-against-removing-buggery-laws>

³⁴⁰ Boxell, Iain et. al, National Survey of Attitudes and Perceptions of Jamaicans Towards Same Sex Relationships: A follow-up study, July 31, 2012, at 19, available at: <http://iflag.org/wp-content/uploads/2013/11/2012-ATTITUDES-AND-PERCEPTIONS-OF-JAMAICANS-TOWARDS-SAME-SEX-RELATIONSHIPS.pdf>

³⁴¹ Boxell, Iain et. al, National Survey of Attitudes and Perceptions of Jamaicans Towards Same Sex Relationships: A follow-up study, July 31, 2012, at 19, available at: <http://iflag.org/wp-content/uploads/2013/11/2012-ATTITUDES-AND-PERCEPTIONS-OF-JAMAICANS-TOWARDS-SAME-SEX-RELATIONSHIPS.pdf>

³⁴² Boxell, Iain et. al, National Survey of Attitudes and Perceptions of Jamaicans Towards Same Sex Relationships: A follow-up study, July 31, 2012, at 19, available at: <http://iflag.org/wp-content/uploads/2013/11/2012-ATTITUDES-AND-PERCEPTIONS-OF-JAMAICANS-TOWARDS-SAME-SEX-RELATIONSHIPS.pdf> 20.

161. The IACHR is aware that the ‘savings law’ clause under section 26(8) of the Jamaican Constitution³⁴³ prevents the Judiciary from reviewing the constitutionality of any laws enacted prior to the adoption of the Constitution. However, it may be reformed legislatively. The Commission notes that the State has not taken measures to enact legislative reforms designed to bring Jamaica’s laws into conformity with the American Convention on Human Rights. The “buggery law” was expected to be challenged in a case to be heard in November 2014; however, the complainant has since withdrawn his case due to the level of threats received.³⁴⁴

162. The State contends that the broad wording of section 13(b) of its Charter of Fundamental Rights and Freedoms³⁴⁵ encapsulates an express prohibition on discrimination. The State maintains that discrimination is expressly prohibited in the Charter and that all persons in Jamaica are entitled to the right to freedom from discrimination on the grounds of (i) being male or female; (ii) race, place of origin, social class, color, religion, political opinions.³⁴⁶

163. In its 2012 Report, the IACHR already expressed concern about the fact that “there is no law which prevents discrimination against an individual on the basis of his or her sexual orientation, gender identity, or gender expression.”³⁴⁷ Civil society organizations have also expressed concern that there is currently no anti-discrimination legislation to protect the human rights and equal treatment of LGBT persons and persons living with HIV. There is no comprehensive HIV/AIDS law, no general anti-discrimination law or no legally enforceable law and policy that can be used to protect anyone against HIV-related discrimination.³⁴⁸ Additionally, there has been no legislative reform to prevent hate speech or hate crimes, nor is there a Human Rights Commission where persons can get redress for discrimination or human rights abuses as stipulated under the Paris Principles by Resolution 1992/54 by the UN General Assembly.³⁴⁹

164. However, the Commission notes that a National HIV Strategy Plan was launched for the 2012-2017 period. The NSP was developed in 2011 through a consultative process that involved the government, faith-based organizations, persons living with HIV and international development partners.³⁵⁰ Jamaica NSP includes concrete programmatic actions to support human rights, reduce stigma and create an enabling legal environment for the HIV response.³⁵¹ The Pan Caribbean Partnership against HIV&AIDS (“PANCAP”) has organized meetings with churches in Jamaica in an effort to facilitate discussions surrounding HIV/AIDS risks and the current buggery law.³⁵² In Jamaica, for example, approximately 27,000 persons are reported to be infected with HIV, 73% of them between the ages 20 and 49. While the infection

³⁴³ Section 26(8) provides that where a law existed before Independence, that law cannot be held to be unconstitutional on the ground that it contravenes rules in Constitution about fundamental rights and freedoms.

³⁴⁴ McFadden, David, “Jamaica’s Javed Jaghai Drops Legal Challenge to Anti-Gay Sodomy Law”, August 30, 2014, available at: http://www.huffingtonpost.com/2014/08/30/javed-jaghai-anti-sodomy-law- n_5740206.html

³⁴⁵ Section 13 (b) of the Charter of Fundamental Rights and Freedoms provides that “all persons in Jamaica are entitled to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons and as citizens of a free and democratic society.

³⁴⁶ LGBT Response by Jamaica to the IACHR (December 16, 2013).

³⁴⁷ IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc 12, 10 August 2012, para. 269.

³⁴⁸ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014; IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

³⁴⁹ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

³⁵⁰ UNAIDS, “Jamaica’s new HIV strategy: “Making Human Rights Real,” August 6, 2012, available at: <http://www.unaids.org/en/resources/presscentre/featurestories/2012/august/20120806hrct/>

³⁵¹ UNAIDS, “Jamaica’s new HIV strategy: “Making Human Rights Real,” August 6, 2012, available at: <http://www.unaids.org/en/resources/presscentre/featurestories/2012/august/20120806hrct/>

³⁵² IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

rate of the general population is estimated to be 1.6%, 31.1% of men who have sex with men are believed to be HIV positive.³⁵³

165. The State has not taken steps to modify laws that allow police broad discretionary power to arrest and detain individuals without warrant or cause. The IACHR received information that acts of violence and discrimination against LGBT persons continue to be widespread and, in turn, pose a serious deterrent to victims, who then choose not to report these crimes. There were reports of abuse and discrimination against LGBT individuals who were either ignored or laughed at when they attempted to report acts of violence, or were themselves the direct victims of police abuse, including arbitrary detention, blackmail, extortion, threats, and cruel and degrading treatment.³⁵⁴ It was reported that no investigative units have been designated for these violations and most of these crimes --if not all-- remain in impunity.³⁵⁵

B. Prevention of acts of violence and discrimination

166. The State has emphasized that it does not seek to discriminate against LGBT persons and makes all efforts to recognize equal rights for such persons.³⁵⁶ According to the State, there have been very significant instances of LGBT rights being discussed in the public domain and the government has taken the view that these are matters subject to freedom of expression in the country and organizations involved in that discussion are encouraged to continue their discourse.³⁵⁷ Civil society organizations criticize the government for not providing public education to counter some of the homophobic and divisive demonizing rhetoric in the discourse.

167. The organization Jamaica Forum of Lesbians, All-Sexuals and Gays ("J-FLAG") has acknowledged that there has been notable progress toward engendering a more hospitable place for LGBT Jamaicans. In spite of this, J-FLAG notes that the intense cultural antipathy toward sexual and gender minorities continues to be prevalent. Many LGBT Jamaicans continue to report violations of their human rights relating to, among other things, the right to shelter, peace and security.³⁵⁸

168. Between January 2012 and June 2014, there were 198 human rights violations reported to J-FLAG and at least 48 requests for support for asylum-seeking Jamaicans. In 2013, J-FLAG received eight reports of displacement, 16 reports of physical attacks, eight reports of sexual violence, and 10 reports of threats.

169. Research suggests that almost two in every five Jamaicans believe that the government is not doing enough to protect and promote the human rights of LGBT Jamaicans to freedom from discrimination, violence and other forms of harassment. One in five Jamaicans is deemed to be tolerant and similarly, one in five Jamaicans would support amendments to the Charter of Rights that explicitly protects the rights of LGBT persons.³⁵⁹

170. Violence toward LGBT persons remains worrisome. In this regard, the IACHR condemned the killing of two men on June 13, 2012 who, according to the civil society organizations and media outlets,

³⁵³ Julia Greenberg of AIDS-Free World, Worldfocus, Sept. 28, 2009, available at <http://pulitzergateway.org/2009/09/julia-greenberg-of-aids-free-world-on-hiv-in-the-caribbean/>

³⁵⁴ IACHR, Press Release No. 35A/14, "Report on the 150th Session of the IACHR", May 13, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/035A.asp

³⁵⁵ IACHR, Press Release No. 35A/14, "Report on the 150th Session of the IACHR", May 13, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/035A.asp

³⁵⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

³⁵⁷ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

³⁵⁸ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

³⁵⁹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

were gay.³⁶⁰ The bodies appear to have been chopped or mutilated, and were found near several rocks with bloodstains.³⁶¹ The murders were held to have occurred in a context of severe violence against LGBT persons in Jamaica.³⁶² The IACHR reiterates that the State has the obligation to investigate such acts on its own initiative and to punish those responsible; and also to conduct an investigation that takes into account whether the murder was committed because of the gender expression, gender identity or sexual orientation of the victims.

171. The IACHR was informed that in July 2013, Dwayne Jones, a 16-year-old transgender teen, was brutally attacked and stabbed to death by a mob at a party in Jamaica.³⁶³ One year after the murder, a local organization indicated that no arrests had been made in the case.³⁶⁴ The IACHR wishes to recognize that there has been a shift recently with respect to the way public officials view violence against LGBT persons. For example, the Minister of Justice of Jamaica condemned the killing of Dwayne Jones, and called upon Jamaicans to “embrace the principle of respect for the basic human rights of all persons”.³⁶⁵ The IACHR praised the commitment of State officials that take a public stance in favor of equality in contexts in which prejudice, discrimination and violence against LGBT persons are widespread.³⁶⁶

172. Also, many sources indicate that “corrective” rape in Jamaica is an issue of concern.³⁶⁷ To name a few of the reported incidents, in 2007 a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days and raped repeatedly day after day by different religious men in the attempt “to make her take men” and “live as god instructed.”³⁶⁸ In 2008, four more cases were reported. The women refused to report the matter to the police out of fear of further victimization.³⁶⁹ At least another three episodes of “corrective” rape were reported in 2009.³⁷⁰ In 2010, a lesbian woman was gang-raped by four men from her community who had complained about her ‘butch’ or ‘manly’ attire. After she was raped, the rapists cut her

³⁶⁰ IACHR, Press Release 82/12. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/082.asp

³⁶¹ IACHR, Press Release 82/12. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/082.asp

³⁶² IACHR, Press Release 82/12. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/082.asp.

³⁶³ The Jamaica Gleaner, “J-FLAG Condemns Mob Killing Of Alleged MoBay Cross-Dresser”, 24 July 2013. Available online at: <http://jamaica-gleaner.com/latest/article.php?id=46697>; The Huffington Post Gay Voices, “Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report”, 11 August 2013. Available at: http://www.huffingtonpost.com/2013/08/11/jamaica-transgender-murder-n_3739448.html; News One, “Jamaican Transgender Teen Beaten To Death At Street Party”, 12 August 2013. Available at: <http://newsone.com/2671439/dwayne-jones-jamaica-transgender/>.

³⁶⁴ Quality of Citizenship Jamaica (QCJ), Press Release: “Dwayne ‘Gully Queen’ Jones One Year Later”, July 22, 2014. Available online at: <http://qcjm.org/wp-content/uploads/2014/07/Gully-Queen-1yr-later.pdf>

³⁶⁵ IACHR, Press Release 89/13. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2013/089.asp; Jamaica Observer, “Justice Minister condemns killing of St James cross-dresser”, July 29, 2013, available at: <http://www.jamaicaobserver.com/news/Justice-Minister-condemns-killing-of-St-James-cross-dresser>

³⁶⁶ IACHR, Press Release 89/13. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2013/089.asp; Jamaica Observer, “Justice Minister condemns killing of St James cross-dresser”, July 29, 2013, available at: <http://www.jamaicaobserver.com/news/Justice-Minister-condemns-killing-of-St-James-cross-dresser>.

³⁶⁷ IACHR, *Hearing on Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica*, 150th Period of Sessions, 27 March 2014; Jamaica Forum for Lesbians, All-Sexuals, & Gays (J-FLAG) et al., *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*. October 2011, p. 14; AIDS-Free World, *Protect Lesbian and Gay Population: A letter by Maurice Tomlinson to the Jamaica Observer*, September 23, 2010. Available online at: <http://aids-freeworld.org/Our-Issues/Homophobia/Protect-Lesbian-and-Gay-Population.aspx>; The Gleaner, “Lesbians Targeted By Men Who Want To ‘Straighten Them Out’”, 3 december 2014. Available at: <http://jamaica-gleaner.com/gleaner/20141203/lead/lead3.html>.

³⁶⁸ Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p.34.

³⁶⁹ Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p.34.

³⁷⁰ Gay Lesbian Bisexual Transgender & Queer Jamaica (GLBTQJ), “‘Corrective Rape’ in Jamaica? Yes”, August 5, 2009. Available online at: <http://glbtqjamaica.blogspot.com/2009/08/corrective-rape-in-jamaica-yes.html>

with a knife 'so she could better take men.' A few days after that episode, a known friend of the first woman was driven away at knifepoint, brutally raped and then dumped half-naked. The women refused to go to the police because of the perceived ineffectual nature of their response.³⁷¹ It is noteworthy, in this respect, that there exists a precedent in a foreign court granting asylum to Jamaican a lesbian taking into account the high risks of suffering "corrective" rape she would be exposed to if returned to Jamaica.³⁷²

173. Additionally, in the past few years, the IACHR has also been receiving information about worrying numbers of irate mob attacks across Jamaica. To mention only a few, in December 2005, a mob chased a gay man into Kingston harbor. To escape his attackers, he jumped into the water but, unable to swim, he was reported to have drowned.³⁷³ In February 2007, three gay men were viciously attacked with stones by a mob in Saint Andrew and had to seek refuge at a pharmacy. As police officers who tried to escort the men out were also attacked, the mob had to be dispersed with tear gas.³⁷⁴ Only a month later, a mob attacked the attendants of the funeral of a gay man. The church windows were smashed and the service suspended.³⁷⁵ When called, the police made no arrests and instead are reported to have joined the mob in jeering the gay men.³⁷⁶ Media reported that a few days after the episode public defender, Earl Witter, reinforced the common view that, if only gay men "would be less flamboyant", there would be less violence against them.³⁷⁷ Further evidence indicates that other attacks like this took place in 2008.³⁷⁸ In 2012, an angry mob broke into a house to attack three gay men who were living together in Jones Town, Kingston. Police officers who arrived at the scene were also confronted by villagers for trying to protect the men.³⁷⁹

174. Another resounding case took place in 2012 at the Jamaica's University of Technology (UTech), when a gay student was chased by mob of male and female students through the university campus. The victim was able to reach the security office, while the mob kept screaming outside. A video shot at the scene shows how at least two guards, instead of protecting the student, went on to slap, kick and punch him in view of the crowd sneaking through the windows.³⁸⁰ A few months later, the guards were subsequently freed by a Court after the student decided to no longer pursue the case.³⁸¹ By mid-2013 mob attacks in Jamaica soared to worrying levels. According to the information received by the IACHR, on August 1, two men inside a patrol car were perceived as gay and a crowd quickly gathered and started harassing the men. Police

³⁷¹ Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p.34.

³⁷² United Kingdom Upper Tribunal Immigration and Asylum Chamber (UTIAC), *SW (lesbians - HJ and HT applied)*, UKUT-251, decision of 24 June 2011, para. 107(2). Available online at: https://moj-tribunals-documents-prod.s3.amazonaws.com/decision/pdf/file/37570/00251_ukut_iac_2011_sw_jamaica_cg.pdf

³⁷³ Jamaica Forum for Lesbians, All Sexuals and Gays (J-FLAG), "Statement on the death of Nokia Cowen", 28 December 2005. Available at: <http://goo.gl/fVq3t5>.

³⁷⁴ Direland, "Jamaica: Gay Leader Escapes St. Valentine's Day Lynch Mob", 21 February 2007. Available at: http://direland.typepad.com/direland/2007/02/jamaica_gay_lea.html;

³⁷⁵ Pink News, "Homophobic violence at Jamaica funeral", April 12, 2007. Available online at: <http://www.pinknews.co.uk/2007/04/12/homophobic-violence-at-jamaica-funeral/>

³⁷⁶ Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p.31.

³⁷⁷ The New York Times, "Attacks Show Easygoing Jamaica Is Dire Place for Gays", February 24, 2008. Available online at: <http://www.nytimes.com/2008/02/24/world/americas/24jamaica.html?pagewanted=all&r=0>

³⁷⁸ The New York Times, "Attacks Show Easygoing Jamaica Is Dire Place for Gays", February 24, 2008. Available online at: <http://www.nytimes.com/2008/02/24/world/americas/24jamaica.html?pagewanted=all&r=0>

³⁷⁹ CVM TV Jamaica - News Watch, June 21, 2012. Video available at: <https://www.youtube.com/watch?v=zC7HSlE0IzI&feature=youtu.be> [minute 3:16]

³⁸⁰ The Gleaner, "CAUGHT ON TAPE! UTech Security Guards Beat Alleged Gay Student", 2 November 2012. Available at:

³⁸¹ On The Ground News, "Confirmed: Former UTech guards accused of beating student freed", August 31, 2013, available at: <http://www.og.nr/rbt/17168-former-utech-guards-accused-of-beating-student-freed.html#.UiX3z9Kkq5t>

officers had to disperse the crowd using warning shots and pepper spray.³⁸² On the very same day, police forces had to be called on to rescue two gay men from another irate crowd, which claimed the men “were engaging in an illegal activity in a house” in St. Catherine.³⁸³ Prior to the police arrival, one of the accused men was attacked by an occupant of the house.³⁸⁴

175. Only ten days after these incidents, the IACHR received information that on August 10, police personnel had to rescue a trans woman in Portmore, St Catherine, after an angry mob who had seen her in the community threatened to flog her.³⁸⁵ On August 22, another irate mob barricaded five gay men inside of their home in Manchester. The men were reportedly trapped until police arrived and escorted them to safety, to the applause of enraged community members.³⁸⁶ Additionally, on August 26 local media reported that two men had to seek refuge after being involved in a motor vehicle accident when angry residents said they appeared to be gay. Police forces had to escort the men out of the police station and away from the angry mob that had gathered outside the premises.³⁸⁷ Two months later, a mob firebombed a house in which several gay men were living in Porto Bello, St James.³⁸⁸

176. In response to this violence, the IACHR formally requested the Jamaican State to provide specific information on the measures adopted in response to the ongoing situation and to report on any measures or policies that had been adopted to prevent further acts of violence against LGBT persons, or those perceived as such. The government replied expressing that

[i]t is difficult to investigate mob killings or attacks given that a mob attack often involves large numbers of persons. It is therefore challenging in those circumstances to determine which persons were actively involved and, in the case of a death, which person or persons landed the fatal blow. In cases of mob attacks, it is also challenging to find witnesses who are willing to give evidence. [In Jamaica] [t]here is no legislation which specifically addresses mob attacks against LGBT persons or those perceived as such.³⁸⁹

177. The IACHR continues to urge the State to take action to prevent and respond to these human rights abuses and additionally, to curtail the high rates of impunity as a result of an ineffective State response which leads to the chronic repetition of such crimes, leaving the victims and their families defenseless.³⁹⁰

178. With respect to LGBT youth, the IACHR has received information that government officials have taken some measures to defend sexual minorities from discrimination and stigmatization as seen when

³⁸² On The Ground News, Residents and Police square off over Cops found in 'compromising position', August 2, 2013, available at: <http://www.og.nr/index.php?news=16360#UhzK39Kkq5u>

³⁸³ The Daily Extra, *Angry crowds surround gay men in two Jamaican incidents*, August 6, 2013, available at: <http://dailyextra.com/world/news/angry-crowds-surround-gay-men-in-two-jamaican-incidents?market=210>

³⁸⁴ CVM TV (Kingston, Jamaica), *CVM Newswatch*, online video, August 1, 2013, available at: http://www.cvmtv.com/videos_1.php?id=1628§ion=watch [minute 25:27]; <http://www.youtube.com/watch?v=bmL-CyvnKU&list=UUzLWTqz6mYoqneZ2B2pPA1A>

³⁸⁵ The Jamaica Star Online, *Cops Rescue Man In Girl Clothes, Save Him From Angry Mob*, August 14, 2013, available at: <http://jamaica-star.com/thestar/20130814/news/news1.html>

³⁸⁶ The Huffington Post Gay Voices, *Jamaica Mob Traps And Barricades 5 Gay Men In House*, August 26, 2013, available at: http://www.huffingtonpost.com/2013/08/26/jamaica-mob-traps-gay-men_n_3818590.html?utm_hp_ref=gay-voices

³⁸⁷ CVM TV (Kingston, Jamaica), *News at noon*, online video, August 26, 2013, available at: http://www.cvmtv.com/videos_1.php?id=1765§ion=noon [minute 5:50]; http://www.youtube.com/watch?v=A4_qE9IRM3M&list=UUzLWTqz6mYoqneZ2B2pPA1A

³⁸⁸ The Jamaica Gleaner, “House Occupied By Gays Firebombed”, October 10, 2013. Available at: <http://jamaica-gleaner.com/gleaner/20131010/lead/lead6.html>

³⁸⁹ Response submitted by the Government of Jamaica to the Inter-American Commission on Human Rights, November 12, 2013.

³⁹⁰ IACHR, Press Release 82/12. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/082.asp

the Ministry of Youth, Sports & Culture expressed regret in its statement addressing the use of anti-gay comments by an artist at the Independence Grand Gala.³⁹¹ Moreover, the Youth Minister announced that the Jamaican government is developing programs focused on LGBT youth.³⁹² At the Panos Caribbean Stakeholder Conference, the Minister acknowledged that stakeholder consultation sought to gain a better understanding of the issues facing LGBT youth given the lack of data in this area.³⁹³ The Youth Minister acknowledged the State's duty not only to provide shelter and protection for abandoned and abused children, but also therapeutic intervention to address the physical and psychological harm they have suffered.³⁹⁴ The IACHR finds that the initiative to assist LGBT youth is much needed given that youth often face homelessness and harassment as a result of their sexual orientation.

179. The IACHR has also received information on homelessness of LGBT persons. Displacement and homelessness of LGBT Jamaicans has been closely linked to the culture and antipathy.³⁹⁵ In 2012, J-FLAG received twelve reports of displacement, all involving men 18 years old or younger.³⁹⁶ In 2013, there were eight reports of displacement, and 14 persons were provided with some form of housing assistance. Of note is a group of about 30-60 LGBT people, most of them young, who are living in the New Kingston business district.³⁹⁷ Displaced LGBT people have also sought refuge in abandoned homes and buildings.³⁹⁸ Additional communities of homeless LGBT people are located in other areas of Kingston, St Andrew, and St James.³⁹⁹ Reports made to J-FLAG indicate that homelessness among LGBT persons is almost always the result of discrimination or violence.⁴⁰⁰ In Jamaica, According to Ivan Cruickshank of Caribbean Vulnerable Communities, LGBT-identified youth comprise up to 40 percent of the nation's homeless youth population⁴⁰¹

180. There have been instances where police have arrested and removed homeless LGBT youth from the New Kingston business district. The Inter-American Commission stresses the paramount importance for the State to address the issue of homelessness to the National Committee on Homelessness and includes LGBT persons in that response.⁴⁰²

181. On June 25, 2014, during the 2014/15 Sectoral Debate, the State announced that it would increase its budgetary support to all local authorities for their homeless program to the sum of

³⁹¹ Jamaica Gleaner, "Culture Minister Regrets Queen Ifrica's Gala Gay Comments", August 9, 2013, available at: <http://jamaica-gleaner.com/latest/article.php?id=47073>

³⁹² Jamaica Gleaner, "Government To Develop Programmes For Homosexual Youth", April 16, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=52343>

³⁹³ Jamaica Gleaner, "Government To Develop Programmes For Homosexual Youth", April 16, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=52343>

³⁹⁴ Jamaica Gleaner, "Government To Develop Programmes For Homosexual Youth", April 16, 2014, available at: <http://jamaica-gleaner.com/latest/article.php?id=52343>

³⁹⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

³⁹⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

³⁹⁷ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

³⁹⁸ J-FLAG, *(re)Presenting and Redressing LGBT Homelessness in Jamaica: Towards a Multifaceted Approach to Addressing Anti-Gay Related Displacement*, July 2014, p. 1.

³⁹⁹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁴⁰⁰ J-FLAG, *(re)Presenting and Redressing LGBT Homelessness in Jamaica: Towards a Multifaceted Approach to Addressing Anti-Gay Related Displacement*, July 2014, p. 2.

⁴⁰¹ Human Rights Watch, *Not safe at home: Violence and Discrimination against LGBT People in Jamaica*, 2014, p. 45.

⁴⁰² IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

JA\$21million⁴⁰³ (up from JA\$16million⁴⁰⁴ the previous year).⁴⁰⁵ J-FLAG has welcomed this budgetary allocation in the hopes that funds can address homelessness among LGBT persons which is often the result of discrimination or violence and has made mention of parliamentary support to address the issue of homelessness among LGBT persons.⁴⁰⁶ J-FLAG has noted that the Ministry of Local Government and Community Development has completed preliminary work on a Homelessness Policy, but that it has not developed it into a policy document.⁴⁰⁷ Additionally, the State has not formulated homelessness programs geared specifically toward LGBT persons who have been made homeless as a result of sexuality or gender identity-based discrimination.⁴⁰⁸ Although there are civil society organizations that address homeless LGBT persons, J-FLAG urges the State to implement an inclusive, non-discriminatory program for all persons who are homeless, including LGBT.⁴⁰⁹

182. Public policy campaigns, which seek to promote tolerance, have faced backlash from media channels. The Office of the Special Rapporteur for Freedom of Expression was informed of the decision by television channels CVMTV and Television Jamaica not to authorize dissemination of the commercial “Love & Respect,” which apparently seeks to promote tolerance of diverse sexual orientations.⁴¹⁰ The Broadcasting Commission found no legal reason not to broadcast the advertisement. An LGBT activist acting in the commercial filed a civil suit and in May of 2013, and the Supreme Court of Jamaica held a hearing on the case.⁴¹¹

183. Additionally, the Office of the Special Rapporteur expresses its concern over the promotion in some media outlets of outwardly discriminatory and homophobic messages that could incite violence against members of the LGBT community, especially when those messages come from shapers of public opinion.⁴¹² According to the information received, during 2013 some media systematically published articles that could incite violence against LGBT individuals, by disseminating messages that encourage hatred against the members of that community.⁴¹³

⁴⁰³ Approximately US\$182,000.

⁴⁰⁴ Approximately US\$139,000.

⁴⁰⁵ Jamaica Observer, “More gov’t funding to assist the homeless,” June 27, 2014, available at: <http://www.jamaicaobserver.com/news/More-govt-funding-to-assist-the-homeless-17025680>

⁴⁰⁶ J-FLAG, “(re)Presenting and Readdressing LGBT Homelessness in Jamaica: Towards a Multifaceted Approach in Addressing Anti-Gay Related Displacement”, July 2014, at 2; IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁴⁰⁷ J-FLAG, “(re)Presenting and Readdressing LGBT Homelessness in Jamaica: Towards a Multifaceted Approach in Addressing Anti-Gay Related Displacement”, July 2014, at 3.

⁴⁰⁸ J-FLAG, “(re)Presenting and Readdressing LGBT Homelessness in Jamaica: Towards a Multifaceted Approach in Addressing Anti-Gay Related Displacement”, July 2014,

⁴⁰⁹ J-FLAG, “(re)Presenting and Readdressing LGBT Homelessness in Jamaica: Towards a Multifaceted Approach in Addressing Anti-Gay Related Displacement”, July 2014, at 4.

⁴¹⁰ IACHR, Annual Report of the Inter-American Commission on Human Rights 2013: Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression OEA /Ser.L/V/II.149 Doc. 50, December 31, 2013, para 559, available at: http://www.oas.org/en/iachr/expression/docs/reports/annual/2014_04_22_%20IA_2013_ENG%20FINALweb.pdf

⁴¹¹ IACHR, Annual Report of the Inter-American Commission on Human Rights 2013: Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression OEA /Ser.L/V/II.149 Doc. 50, December 31, 2013, para 559, available at: http://www.oas.org/en/iachr/expression/docs/reports/annual/2014_04_22_%20IA_2013_ENG%20FINALweb.pdf

⁴¹² IACHR, Annual Report of the Inter-American Commission on Human Rights 2013: Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression OEA /Ser.L/V/II.149 Doc. 50, December 31, 2013, para 559, available at: http://www.oas.org/en/iachr/expression/docs/reports/annual/2014_04_22_%20IA_2013_ENG%20FINALweb.pdf at para 560.

⁴¹³ IACHR, Annual Report of the Inter-American Commission on Human Rights 2013: Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression OEA /Ser.L/V/II.149 Doc. 50, December 31, 2013, para 559, available at: http://www.oas.org/en/iachr/expression/docs/reports/annual/2014_04_22_%20IA_2013_ENG%20FINALweb.pdf

184. Caribbean Vulnerable Communities (“CVC”) has noted a lack of balance and input from the State aimed at providing information in defense of human rights and human rights defenders as well as providing public education to counter some of the homophobic and divisive demonizing rhetoric.⁴¹⁴ The State’s lack of input in this regard does not only negatively affect the national HIV response or LGBT rights, but it is a regional impact that has led to the Caribbean Community (“CARICOM”) questioning its provision of funding for education for sexual and reproductive rights.⁴¹⁵

185. Given that widespread discrimination and violence based on real or perceived sexual orientation and gender identity and expression is pervasive in Jamaica, the recommendation that government officials must take measures to prevent discrimination and stigmatization against LGBT persons. According to the information received, the State has not adopted concrete measures to comply with recommendations (b) to (e) above.

1. Training of justice officials

186. There is no structural program aimed at training criminal justice officials (including judges) on rights and standards applicable to LGBT persons and issues surrounding gender identity and HIV/AIDS.⁴¹⁶ However, in its response to a questionnaire from the IACHR, the State indicated that there was specific training to police officials regarding human rights standards and non-discrimination, particularly concerning vulnerable persons (lesbian, gay and transgender persons).

2. Training of police officials and investigation of instances of police abuse

187. The State developed a diversity policy that guides the members of the Jamaica Constabulary Force (“JCF”) in their professional dealings with sexual minorities. Training in international human rights standards is conducted by the Jamaica Police Academy, the Jamaica Constabulary Staff College, and the Caribbean Search Centre.

188. The JCF’s in-service training also includes training in human rights. Officers are familiarized with the major regional and international human rights instruments and the importance of the respect of constitutional rights of all persons irrespective of their sexual orientation and gender identity/expression.

189. With regard to the criminal investigation into the murder of trans teenager Dwayne Jones, the police contacted J-FLAG in order to provide information about the murder and the investigations.⁴¹⁷ However, an arrest has not yet been made despite collecting several statements from alleged witnesses.⁴¹⁸ The State has indicated that it is the duty of the JCF to uphold the human rights of every person regardless of sexual orientation or gender identity.⁴¹⁹ Additionally, the State informed the IACHR that it is also the duty of police officers to respond as promptly as possible to any report of a crowd gathering in order to threaten the safety of any person.⁴²⁰

⁴¹⁴ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁴¹⁵ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁴¹⁶ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴¹⁷ J-FLAG, Promoting Respect for Diversity: Annual Report 2013, at 9, available at: <http://jflag.org/wp-content/uploads/2014/08/J-FLAG-Annual-Report-2013.pdf>

⁴¹⁸ J-FLAG, Promoting Respect for Diversity: Annual Report 2013, at 9, available at: <http://jflag.org/wp-content/uploads/2014/08/J-FLAG-Annual-Report-2013.pdf>

⁴¹⁹ Response to the Article 41 Letter from Jamaica (November 6, 2013).

⁴²⁰ Response to the Article 41 Letter from Jamaica (November 6, 2013).

190. In a similar vein, J-FLAG has experienced an improved working relationship with the police and has conducted a number of sensitization sessions with key stakeholders including the police, the media, and the LGBT community itself, with its outreach also geared toward rural communities in Clarendon, Manchester, Westmoreland, St. Ann, and Portland.⁴²¹

191. Overall, J-FLAG has continued to benefit from an improved working relationship with the JCF, including and especially with the Office of the Police Commissioner, Centre for Investigation of Sexual Offences & Child Abuse (“CISOCA”), and officers at the Half Way Tree Police Station and the New Kingston Police Post.⁴²² J-FLAG has also noted a higher level of trust for the police leading to an increase in the number of incidents of LGBT victimization reported to the police.⁴²³

192. According to J-FLAG, police officers in Kingston, St Andrew, St James, and St Ann’s have continued to participate in a number of sensitization sessions. However, there are still a number of challenges related to reports by LGBT persons who continue to fear reporting to the police because of fear of stigma and discrimination and further violation.⁴²⁴

193. Incidents of lesbophobia, biphobia and transphobia are also common and police are reluctant to report crimes against such persons. Lesbian, bisexual and transgender women remain vulnerable to assault because of their sexual orientation and gender expression and identity. For example, in 2013, at a police station in St Catherine, a lesbian couple reported that they were discriminated against when they went to report an incident that had occurred against them. In a similar vein, Quality of Citizenship Jamaica⁴²⁵ (“QCJ”) recalled an incident that took place in October 2013 where “Kashima Talak”, a masculine identified lesbian, was charged with assault causing bodily harm, although she was attacked and did not wound her attacker. The INDECOM was called upon to investigate the matter, but there has been no indication it will do so.⁴²⁶ There is no mainstreaming of the police training that has been done in Jamaica. Any training is led by the commitment of the civil society organizations such as JFJ rather than the government itself.⁴²⁷ Civil society organizations are concerned given that these attacks occur in a legal context that does not provide redress for hate crimes.⁴²⁸

C. Investigation into acts of violence and discrimination

⁴²¹ J-FLAG, Promoting Respect for Diversity: Annual Report 2013, at 10, available at: <http://jflag.org/wp-content/uploads/2014/08/J-FLAG-Annual-Report-2013.pdf>

⁴²² J-FLAG, Promoting Respect for Diversity: Annual Report 2013, at 10, available at: <http://jflag.org/wp-content/uploads/2014/08/J-FLAG-Annual-Report-2013.pdf>

⁴²³ J-FLAG, Promoting Respect for Diversity: Annual Report 2013, at 10, available at: <http://jflag.org/wp-content/uploads/2014/08/J-FLAG-Annual-Report-2013.pdf>

⁴²⁴ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁴²⁵ A registered organization in Jamaica that focuses exclusively on advocating for the human rights of lesbian, bisexual, and trans women.

⁴²⁶ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴²⁷ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴²⁸ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

194. Civil society organizations have lauded the State for the positive changes as a result of the stated policy of non-discrimination in policing which the Commissioner of Police implemented in 2011.⁴²⁹ Additionally, there have been efforts to investigate thoroughly and impartially acts of discrimination based on sexual orientation and gender identity. The Ministry of National Security expanded the 2013 Jamaica National Crime Victimization Survey (“JNCVS”) in order to include questions about crimes believed to result from knowledge or assumptions about the sexual orientation of the victims.⁴³⁰ However, there is no designated investigative unit for hate crimes nor are there effective sanctions for police initiated discrimination and abuse.⁴³¹ J-FLAG and CVC have stated that there are also no active measures on the ground to defend sexual minorities, despite evidence from the Boxell (2012) study that there is an increased willingness and support from the public for a more active stance by the State.⁴³² For example, there is no designated investigative unit, as was recommended in the IACHR’s 2012 Report, nor are there any sanctions for police-initiated discrimination or abuse.⁴³³

195. J-FLAG and CVC have acknowledged that there was an articulation of a diversity policy in the JCF but nothing much has happened.⁴³⁴ It is still left to the discretion of individual police officers to institute that diversity policy and there is still a considerable amount of training that must be given to that policy.⁴³⁵ Despite the training programs in the JCF, police abuse of LGBT persons remains a problem. Civil society organizations have reported that the police target homeless MSM particularly those who identify as transgender.⁴³⁶ A specific incident occurred in February 2014 where the police rounded up LGBT youth and a judge later held that loitering in a public sewer was not a criminal offence.⁴³⁷ Reporting to the police is also problematic because victims are faced with a lengthy process, and where complaints have been processed, the investigations have been poor and inadequate.⁴³⁸

D. Recommendations regarding access to health

196. The IACHR is further concerned about the information it has received on the impact of legislation criminalizing same-sex intimacy on the enjoyment of the highest attainable standard of health. Then UN Special Rapporteur on the Right to Health has established that “the legal prohibition of same-sex relations in many countries, in conjunction with a widespread lack of support or protection for sexual

⁴²⁹ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴³⁰ J-FLAG, “Annual Report: Promoting Respect for Diversity”, 2013, at 9.

⁴³¹ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴³² IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴³³ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴³⁴ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴³⁵ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴³⁶ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴³⁷ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴³⁸ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

minorities against violence and discrimination, impedes the enjoyment of sexual and reproductive health by many people with lesbian, gay, bisexual and transgender identities or conduct”⁴³⁹.

197. The Ministries of Justice and Health have also acknowledged the link between the “buggery law” and the risk of the spread of HIV. In this respect, the State has informed the IACHR that the Ministry of Justice is in dialogue with UNDP on aspects of the OAPA with particular focus on the public health disadvantages of the current law in the fight against HIV/AIDS.⁴⁴⁰ The IACHR welcomes this collaborative approach between the Ministries of Justice and Health given the disclosure made by civil society organizations that the Ministry of Health possesses very limited political bind from the other sectors of government.⁴⁴¹ Civil society organizations have acknowledged that the lack of recognition of the relationship between criminalization of private and consensual same-sex acts, discrimination, and HIV continues to prove a key challenge to address the high rate of HIV among MSM.⁴⁴² There is no legally enforceable law or policy that can protect anyone from HIV-related discrimination.⁴⁴³

198. It is noted that due to historical circumstances, particularly as it regards the association of HIV/AIDS with the gay community, the enjoyment of the right to health is disproportionately impacted as it pertains to HIV/AIDS diagnosis and treatment.⁴⁴⁴ HIV prevalence at 32.8% in MSM in Jamaica is one of the highest in the world. As it relates to sex education and sexual and reproductive rights for children, there is currently the highest number of new HIV infections occurring in females 15-19 years old. CVC’s own studies have shown that youth at risk have very limited knowledge of HIV or even how to protect themselves.⁴⁴⁵

199. The State responded favorably to the IACHR’s recommendation to train healthcare workers and providers on issues around sexuality, gender identity, and how these play a role in exposing a person to HIV/AIDS. As part of Jamaica’s NSP, J-FLAG in partnership with the National HIV STI Programme, trained 60 public health workers⁴⁴⁶ to develop better outreach skills with members of the LGBT community.⁴⁴⁷

200. The curriculum focused on issues relating to the provision of services and specific issues affecting the LGBT community, which included sexuality, values and attitudes, sexual health of MSM, and

⁴³⁹ E/CN.4/2004/49 at 38.

⁴⁴⁰ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴⁴¹ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴⁴² IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴⁴³ IACHR, Hearing on “Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica,” 150th Regular Session, March 27, 2014.

⁴⁴⁴ In virtually all regions outside of sub-Saharan Africa, HIV disproportionately affects men who have sex with men. (UNAIDS, “Report on the global AIDS epidemic 2008: executive summary” (Geneva, 2008), p. 30) in UN General Assembly (Anand Grover), Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, April 27, 2010, para 19, available at: <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Report%20of%20the%20Special%20Rapporteur%20on%20the%20Right%20of%20everyone-1.pdf>

⁴⁴⁵ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁴⁴⁶ Doctors, nurses, contact investigators, laboratory technicians, peer educators, and ward assistants from all four health regions. Six persons from the National Family Planning Board were also trained.

⁴⁴⁷ Jamaica Gleaner, “Better Health Care for LGTB’s,” January 12, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140112/news/news7.html>

communication.⁴⁴⁸ J-FLAG revealed that the training was a much-needed step in addressing some of the challenges faced by frontline workers as figures revealed that 65% of the healthcare workers had never been trained about MSM-health related issues and that 93% had never been trained to offer counseling about anal sex.⁴⁴⁹ Members of the LGBT community also attended in order to create a dialogue between healthcare workers and clear up any misconceptions about the LGBT community that the latter might have held.⁴⁵⁰ Positive developments include improved governance, access to treatments, prevention successes, and increased public awareness.⁴⁵¹

201. However, the IACHR remains concerned about the challenges highlighted by civil society organizations including the under-coverage of testing and treatment, and the commitment to ensuring that confidentiality of patients is respected and the lack of sanctions for healthcare workers who breach patient confidentiality.⁴⁵² Lack of adherence to confidentiality of patient's medical diagnoses, criminalization of same sex acts, sex work, and drug use contribute to the lack of access to HIV services.⁴⁵³ The high prevalence of HIV among MSM has been attributed to lack of targeted programs and lack of legislation to address issues of stigma and discrimination toward that population.

202. Civil society organizations have indicated that there is also no specific intervention, program or outreach specifically for lesbian and bisexual women from the organizations that work on the national HIV/AIDS response.⁴⁵⁴ The IACHR expresses concern over this omission given the incidences of corrective rape of lesbian and bisexual women that heightens their vulnerability to contracting HIV.⁴⁵⁵ Despite this risk, there has been no research into the actual levels of HIV in within the lesbian and bisexual population.⁴⁵⁶ In this regard, civil society organizations have urged the State's health sector to recognize the increased risk of lesbian and bisexual women to HIV infection by creating targeted interventions for this community, and that the National HIV Program disaggregate data based on the sexual orientation of women as well as men.⁴⁵⁷

203. J-FLAG has noted that many LGBT persons do not seek health services for various reasons including fear of disclosing their sexual orientation or sexual practices to public health workers.⁴⁵⁸ In this

⁴⁴⁸ Jamaica Gleaner, "Better Health Care for LGTB's," January 12, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140112/news/news7.html>

⁴⁴⁹ Jamaica Gleaner, "Better Health Care for LGTB's," January 12, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140112/news/news7.html>; IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁴⁵⁰ Jamaica Gleaner, "Better Health Care for LGTB's," January 12, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140112/news/news7.html>

⁴⁵¹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁵² IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁵³ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁵⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁵⁵ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁵⁶ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁵⁷ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁵⁸ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Period of

context, the IACHR favors a right-to-health approach requires that States decriminalize same-sex consensual conduct, as well as repeal laws that discriminate in respect of sexual orientation and gender identity, in order to meet core obligations of the right to health and create an environment enabling full enjoyment of the right.⁴⁵⁹

204. The IACHR must reiterate that a right-to-health approach is favored given that the criminalization of private, consensual same-sex conduct has the potential to create an environment that is not conducive to affected individuals achieving full realization of their right to health.⁴⁶⁰ Criminalization is not only a breach of a State's duty to prevent discrimination; it also creates an atmosphere wherein affected individuals are significantly disempowered and cannot achieve full realization of their human rights.⁴⁶¹

205. The IACHR was informed by civil society organizations that the dismissal of Professor Brendan Bain in May 2014 resulted in a backlash against the rights of LGBT persons. Professor Bain, while heading a regional program to reduce stigma and discrimination among health professionals, gave testimony in the most important test case to date on LGBT rights and presented arguments for the retention of the 1861 law that "criminalizes homosexuality".⁴⁶² The University of the West Indies ("UWI") terminated Professor Bain's contract, citing, among other things, the loss in confidence in his leadership of the community that he was meant to be serving.⁴⁶³

206. Professor Bain's removal resulted in region-wide media coverage on the issue, responses from two former Jamaican Prime Ministers, and a church-organized march of 25,000 people in Kingston against a so-called "gay lobby".⁴⁶⁴ CVC has reported that the backlash has resulted in an environment in which LGBT human rights defenders and those involved in working with groups at increased risk of HIV, such as children, has become increasingly hostile in the past six months.⁴⁶⁵

207. The dismissal referred to above was perceived by many commentators as a case of competing rights -the right to freedom of thought and expression versus gay rights- with LGBT persons portrayed as less deserving.⁴⁶⁶ The State maintained that it has not sought to discriminate against human

Session, October 28, 2014.

⁴⁵⁹ UN General Assembly (Anand Grover), Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, April 27, 2010, at para 26, available at: <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Report%20of%20the%20Special%20Rapporteur%20on%20the%20right%20of%20everyone-1.pdf>

⁴⁶⁰ UN General Assembly (Anand Grover), Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, April 27, 2010, at para 26, available at: <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Report%20of%20the%20Special%20Rapporteur%20on%20the%20right%20of%20everyone-1.pdf>

⁴⁶¹ UN General Assembly (Anand Grover), Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, April 27, 2010, at para 26, available at: <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Report%20of%20the%20Special%20Rapporteur%20on%20the%20right%20of%20everyone-1.pdf> at 25.

⁴⁶² IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁶³ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁶⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁶⁵ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁶⁶ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

rights defenders, and that it has not sought to persecute persons who are involved in the protection of LGBT rights.⁴⁶⁷ However, civil society organizations expressed alarm at the re-emergence of the argument that rights are culturally relative, as well as the invisibility and the interrelatedness of human rights as key principles, being misunderstood and sometimes deliberately misrepresented in Jamaica.⁴⁶⁸

208. Also impacting on the discrimination that vulnerable communities face in Jamaica is the fact that major media houses are hesitant to carry positive LGBT programming and messages. CVC's tracking of 91 articles that occurred during the period of turmoil following the removal of Professor Bain showed only 29 articles that even vaguely supportive of LGBT rights.⁴⁶⁹ Sixty-eight percent (68%) of the articles ranged from derogatory to inflammatory with headlines such as "Bain beheaded by Gay Taliban", among others.⁴⁷⁰ Senior journalists walked out of press conferences and print media suggested that the "homosexual agenda" included the sexual grooming of children.⁴⁷¹

209. CVC has stated that there has been silence from government officials and no countering of the narrative that demonizes sexual minorities despite Jamaica's own national AIDS program prioritizing the reduction of stigma and discrimination.⁴⁷² Some of the State's response has been openly hostile, questioning programs on sexual and reproductive rights health education, and even to the regional CARICOM level.⁴⁷³ The impact of the HIV regional response has extended regionally to the Caribbean Heads of State deferring indefinitely the adoption of a 'Justice for All Declaration' proposing the removal of laws and practices which criminalize groups most at risk for HIV.⁴⁷⁴

210. Overall, the State has made some promising steps in fostering greater social inclusion and protection of LGBT persons. However, with no comprehensive legal framework to ensure non-discrimination on the basis of sexual orientation and gender identity, the rights of LGBT persons, or those with diverse sexual orientations and gender identities continue to be violated. The IACHR urges the State of Jamaica to decriminalize same-sex intimacy through legislation reform, and encourages the State to strengthen its efforts to train criminal justice officials and law enforcement personnel on their roles in protecting the rights of LGBT persons. Additionally, the State should introduce and uphold sanctions for public officials who are found responsible of anti-discriminatory conduct. Similar sanctions should also be imposed for healthcare workers who breach confidentiality requirements when treating persons who engage in same sex intercourse and persons living with HIV. The IACHR underscores that proper training and sensitization of public officials at all levels of government will contribute to curtailing discrimination and violence toward LGBT persons.

IX. RIGHTS OF PERSONS WITH DISABILITIES

⁴⁶⁷ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁶⁸ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁶⁹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁷⁰ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁷¹ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁷² IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁷³ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

⁴⁷⁴ IACHR, Hearing on "Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica," 150th Regular Session, March 27, 2014.

211. The IACHR made the following recommendations concerning the rights of persons with disabilities in its 2012 Report:

- a. Adopt specific legislation, policies and practices, to ensure that all persons living with disabilities enjoy their rights free of any form of discrimination.
- b. Strengthen training for policy makers, and those within the Ministries of Health, Education, and Labor at all levels, on issues around the rights and needs of persons with disabilities.
- c. Adopt laws and policies establishing a right to education for children with disabilities and programs in order to ensure access to education (and if necessary, an appropriate, specialized education).
- d. Train civil servants within the judiciary and the police force on international as well as domestic obligations to uphold the rights of persons with disabilities.
- e. Train police specifically to be able to respond appropriately and respectfully in every interaction with a person with a disability.
- f. Ensure that persons with disabilities receive the services and housing they require to prevent damage to their physical or mental well-being.
- g. Adopt the measures necessary, including the designation of funding and working with the private sector, to ensure that facilities and services throughout the country are available to persons with disabilities.
- h. Establish and/or strengthen the availability of medical and other required services for persons with physical or mental disabilities who do not live in the principal urban areas.

A. Non-discrimination and Social Inclusion

1. Disabilities Bill

212. The State has adopted specific legislation, policies and practices to ensure that all persons living with disabilities enjoy their rights free of any form of discrimination. The Jamaican Parliament passed the Disabilities Bill on July 22, 2014 and awaits passage by the Senate before it can be signed into law. The Disabilities Bill is heralded as a necessary instrument to provide a legislative framework for persons with disabilities and simultaneously to promote the principle that persons with disabilities ought to enjoy fundamental rights.⁴⁷⁵ The IACHR commends the State for passage of the Disabilities Bill.

213. Notable objectives of the Disabilities Bill include: a legal definition of discrimination;⁴⁷⁶ a requirement that persons with disabilities have access to health⁴⁷⁷, education,⁴⁷⁸ transportation⁴⁷⁹,

⁴⁷⁵ Henry, Paul, "Disabilities Bill: Better (10 years) late than never," Jamaica Observer, June 25, 2013, available at: http://www.jamaicaobserver.com/news/Court-to-hear-motion-challenging-buggery-law-today_14569175

⁴⁷⁶ Disabilities Bill 2014, section 2(1), available at: http://www.japarliament.gov.jm/attachments/339_The%20Disabilities%20Act.pdf

⁴⁷⁷ Disabilities Bill 2014, section 35.

⁴⁷⁸ Disabilities Bill 2014, sections 26-28.

⁴⁷⁹ Disabilities Bill 2014, section 40.

employment⁴⁸⁰, public and political life⁴⁸¹, housing and premises;⁴⁸²facilitating the establishment of the Jamaica Council for Persons with Disabilities⁴⁸³and the Disabilities Rights Tribunal;⁴⁸⁴and provisions for public and commercial premises being constructed to be designed to make common areas accessible to persons with disabilities.⁴⁸⁵

214. The National Development Plan based on the Vision 2030 also incorporated a Draft Sector Plan for persons with disabilities. It included a strategic vision and planning framework for persons with disabilities focused on guaranteed human rights of persons with disabilities, inclusion in all spheres of life, and minimizing the risk of an acquired disability.⁴⁸⁶ The proposed Building Code Act will mandate that construction professionals must ensure that all new buildings are fully accessible and designed with the capacity for ramps, rails, and facilities for deaf persons.⁴⁸⁷

215. The Jamaica Council for Persons with Disabilities' functions include advising the Minister of Labour and Social Security on matters pertaining to persons with disabilities including promoting effective measures for the prevention of circumstances which cause a disability in persons, the rehabilitation of persons with disabilities, public education concerning disabilities, and improvement in living conditions of persons with disabilities by facilitating their social and economic development.⁴⁸⁸

216. Additionally, the Jamaica Council for Persons with Disabilities would advise the Minister of Labour and Social Security and monitor policy and programs concerning disabilities, international developments regarding the rights of persons with disabilities, conduct public education programs, prepare codes of practice for the avoidance of discrimination on the ground of a person's disability, make recommendations to the Minister regarding enforcement of sections of the Disability Act and national measures for the avoidance of discrimination against persons with disabilities, and finally and advocating for policies and programs for the government to have due regard to the interests of persons with disabilities.⁴⁸⁹

217. Section 16 of the Disabilities Bill authorizes a person with a disability (or their caregiver) to make a written complaint to the Jamaica Council for Persons with Disabilities where there has been an act of discrimination on the ground of that person's disability.⁴⁹⁰ In such a case the Council may conduct a formal investigation through its authority under the legislation or shall conduct an investigation if the Minister of

⁴⁸⁰ Disabilities Bill 2014, sections 29-31.

⁴⁸¹ Disabilities Bill 2014, sections 32-34.

⁴⁸² Disabilities Bill 2014, sections 36-39.

⁴⁸³ Disabilities Bill 2014, section 5; section 6 specifies the functions of the Council for Persons with Disabilities.

⁴⁸⁴ Disabilities Bill 2014, section 15.

⁴⁸⁵ Disabilities Bill 2014, section 36(2); Jamaica Observer, "Disabilities Bill: Better (10 years) late than never," July 24, 2014, available at: http://www.jamaicaobserver.com/editorial/Disabilities-Bill--Better--10-years--late-than-never_17229105; Jamaica Observer, "Smith says Gordon House must create access for disabled, before passing Disabilities Act," July 4, 2014, available at: <http://www.jamaicaobserver.com/news/Smith-says-Gordon-House-must-create-access-for-disabled--before-passing-Disabilities-Act>

⁴⁸⁶ Government of Jamaica, Vision 2030 Jamaica National Development Plan: Persons with Disabilities Draft Sector Plan, June 2006, at page 23, available at: http://www.vision2030.gov.jm/Portals/0/Sector_Plan/Microsoft%20Word%20-%20Persons%20with%20Disabilities%20pdf.pdf

⁴⁸⁷ Jamaica Observer, "Gordon House not friendly to disabled," July 22, 2014, available at: <http://www.jamaicaobserver.com/news/Gordon-House-not-friendly-to-disabled>

⁴⁸⁸ Disabilities Bill, section 6(1)(a)(i)-(iv).

⁴⁸⁹ Disabilities Bill, sections 6(b)-(g).

⁴⁹⁰ Disabilities Bill, section 16(1).

Labour and Social Security so directs.⁴⁹¹ The Council shall refer complaints made to it under section 16 to the Tribunal for determination or for alternative dispute resolution (once the parties consent).⁴⁹²

218. The Disabilities Rights Tribunal would be tasked with reviewing and adjudicating cases of discrimination against persons with disabilities. The Tribunal may hear the complaint referred to it for settlement by the Council and make such order as it sees fit.⁴⁹³ The Jamaica Council for Persons with Disabilities and the Tribunal aim to facilitate the right of access to justice for persons with disabilities through its direct mechanisms that allow aggrieved persons to lodge complaints. It is understood that the Council and the Tribunal are in their early stages and their utility cannot be properly assessed at this stage, however, the IACHR will continue to monitor any future use and challenges.

2. Access to education

219. The Office of the Public Defender (“OPD”) recommended to the State a Disability Equality Policy which, if implemented, will be a legislative requirement imposing a statutory duty on school boards to outline the steps that they will put in place to improve access to their institutions for students who have physical disabilities.⁴⁹⁴ The OPD anticipates that the Disability Equality Policy would be reviewed every five to seven years and that it should be implemented in top schools and two middle-ranking schools in each parish in conjunction with the Ministry of Education.⁴⁹⁵ The OPD aims that this plan will enable mainstream schools to meet the needs of children with physical disabilities, while preserving specialist schools for children with severe or multiple disabilities.⁴⁹⁶

220. The IACHR welcomes the Disabilities Bill’s increased emphasis and improvement of physical accessibility of persons living with disabilities. It is commendable that attention is also paid to other rights including employment and education in order to ensure that persons with disabilities are fully integrated into social and economic spheres.

B. Children with disabilities

221. The State has also been proactive in adopting law and policies establishing a right to education for children with disabilities and programs in order to ensure access to education. The Caribbean Development Bank (“CDB”), under the Community Investment Project, provided a sum of JA\$160.5 million⁴⁹⁷ to carry out rehabilitation at nine schools in rural Jamaica ahead of the 2014/2015 school year. One of the schools to benefit from these funds will be the May Pen School of Special Education for Children with Intellectual Disabilities.⁴⁹⁸

222. However, the Bill does not provide express acknowledgement of the right to legal capacity of persons with disabilities. Section 3(b) contains a general provision to “promote individual dignity and individual autonomy, including the freedom of choice and independence of a person with a disability.” The

⁴⁹¹ Disabilities Bill, sections 17(1).

⁴⁹² Disabilities Bill, sections 19(2)(a) and (b).

⁴⁹³ Disabilities Bill, sections 19(1) and (3).

⁴⁹⁴ Mukulu, Matondo, “Disabled Children in Education: THE INVISIBLES,” Jamaica Gleaner, July 20, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140720/cleisure/cleisure2.html>

⁴⁹⁵ Mukulu, Matondo, “Disabled Children in Education: THE INVISIBLES,” Jamaica Gleaner, July 20, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140720/cleisure/cleisure2.html>

⁴⁹⁶ Mukulu, Matondo, “Disabled Children in Education: THE INVISIBLES,” Jamaica Gleaner, July 20, 2014, available at: <http://jamaica-gleaner.com/gleaner/20140720/cleisure/cleisure2.html>

⁴⁹⁷ Approximately US\$1,400,000.

⁴⁹⁸ Reynolds-Baker, Athaliah, “\$160.5 Million to Rehabilitate Nine Schools in Rural Jamaica,” Jamaica Information Service, July 28, 2014, available at: <http://jis.gov.jm/160-5-million-rehabilitate-nine-schools-rural-jamaica/>

IACHR deems the inclusion of legal capacity of persons with disabilities an important component because though its exercise persons with disabilities can enjoy other rights. Additionally, it replaces the pattern of substitute decision-making and lack of agency with one that favors a supported system in decision-making.

C. Training civil servants

223. There have been efforts made to train civil servants within the police force to uphold the rights of persons with disabilities. INDECOM has indicated that the JCF Manual provides guidelines for the treatment of persons with mental disabilities, and outside of training, the police are encouraged to work with local mental health representatives.⁴⁹⁹ However, there are still worrisome occurrences that indicate that persons with mental disabilities in state custody receive inadequate care and attention. INDECOM is currently investigating the death of a man with a mental disability (schizophrenic), Andre Allison, who had been fatally stabbed by another inmate while held in the Central Police lock-up, Kingston.⁵⁰⁰ Mr. Allison's attorney alleged that the State failed to heed her warnings that Mr. Allison had schizophrenia and should not have been housed with the general population.⁵⁰¹ His attorney said that she had also expressed her concern about Mr. Allison's safety to the resident magistrate, public defender, clerk of the courts and the DPP were ignored.⁵⁰² The legislation also addresses the IACHR's recommendation to ensure that persons with disabilities receive the services and housing they require in order to prevent damage to their physical and mental well-being.

D. Accessibility to facilities and services

224. The State has also been responsive in adopting the measures necessary to ensure that facilities and services throughout the country are available to persons with disabilities. Positive steps have also been taken to facilitate training and employment of 500 persons with disabilities on the PATH⁵⁰³ Program.⁵⁰⁴ On March 11, 2014, several consultant contracts⁵⁰⁵ were signed with various organizations to complete skills training and certification of persons with disabilities in addition to organizational strengthening activities.⁵⁰⁶ These initiatives were funded in the amount of US\$2.9 million under the Social and Economic Inclusion of Persons with Disabilities Project by the World Bank.⁵⁰⁷

⁴⁹⁹ Jamaica Observer, "INDECOM wants mentally ill people secured from State violence," October 13, 2013, available at: http://www.jamaicaobserver.com/news/INDECOM-wants-mentally-ill-people-secured-from-State-violence_15244444

⁵⁰⁰ Reid, Tyrone, "Justice System Failing Mentally Ill," Jamaica Gleaner, June 9, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130609/lead/lead99.html>

⁵⁰¹ Reid, Tyrone, "Justice System Failing Mentally Ill," Jamaica Gleaner, June 9, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130609/lead/lead99.html>

⁵⁰² Reid, Tyrone, "Justice System Failing Mentally Ill," Jamaica Gleaner, June 9, 2013, available at: <http://jamaica-gleaner.com/gleaner/20130609/lead/lead99.html>

⁵⁰³ Programme of Advancement Through Health and Education: delivers social benefits to the needy in society and is administered by the Ministry of Labour and Social Security in collaboration with the Ministries of Health and Education and other agencies. It is funded by the IDB, World Bank, and other development partners. The IDB has contributed US\$145million. (Jamaica Observer, "IDB gives thumbs up to PATH's achievements," July 11, 2014, available at: http://www.jamaicaobserver.com/news/IDB-gives-thumbs-up-to-PATH-s-achievements_17131328)

⁵⁰⁴ Japan International Corporation Press Release, "Social and Economic Inclusion of Persons with Disabilities Project: Japan's Policy and Human Resources Development (PHRD) Technical Assistance (TA) Programme to support Disability and Development", March 11, 2014, available at: <http://www.jica.go.jp/jamaica/english/office/topics/140311.html>

⁵⁰⁵ Consultant contracts were awarded in the following areas: Vocational and Job Skills Training (Certification); Job Coaching and Employment Readiness Training; Apprenticeship on the Job Training; Organizational Strengthening.

⁵⁰⁶ Japan International Corporation Press Release, "Social and Economic Inclusion of Persons with Disabilities Project: Japan's Policy and Human Resources Development (PHRD) Technical Assistance (TA) Programme to support Disability and Development", March 11, 2014, available at: <http://www.jica.go.jp/jamaica/english/office/topics/140311.html>

⁵⁰⁷ Japan International Corporation Press Release, "Social and Economic Inclusion of Persons with Disabilities Project: Japan's Policy and Human Resources Development (PHRD) Technical Assistance (TA) Programme to support Disability and Development", March 11, 2014, available at: <http://www.jica.go.jp/jamaica/english/office/topics/140311.html>

E. Medical services

225. The level of care at the Golden Age Home in Kingston was scrutinized in the IACHR's 2012 Jamaica Report. The Management of the Golden Age Home is aiming to introduce a number of programs for its residents including a health and wellness facility, medical laboratory, nutrition services for the aged, and a daycare facility.⁵⁰⁸ The State, through the Minister of Labour and Social Security, has pledged support for the plans above. However, there is no information available regarding the extent to which these goals have been achieved.

226. The IACHR urges the State to comply with international standards that call for the gradual deinstitutionalization of persons with disabilities and, rather, to focus on the transfer of persons with disabilities to social rehabilitation centers for their reintegration into society in order to end the deprivation of liberty on long term institutions on the basis of disability.

X. RIGHTS TO FREEDOM OF THOUGHT AND EXPRESSION

227. In its 2012 Report the IACHR made the following recommendations to the State with regard to the rights to freedom of thought and expression:

- a. Bring its domestic legislation on defamation into conformity with the parameters established in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression. In particular, it should repeal the crime of criminal libel, at least insofar as it applies to cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in such cases, civil damages should only be awarded if it is proven that in disseminating the news, the defendant had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of the information. Civil damages for defamation should in all cases be proportionate.
- b. Take swift action to adopt the recommendations of the Joint Select Committee, and require that public figures prove malice, knowledge or gross negligence in order to succeed in a civil defamation action.
- c. Continue to strengthen its access to information laws and procedures by adopting the recommendations of the Joint Select Committee of Parliament to Consider and Report on the Operation of The Access to Information Act, including the recommendation to repeal the Official Secrets Act and provide statutory authority to the Access to Information Unit.

A. Domestic legislation on defamation

228. The State has taken efforts to bring its domestic legislation on defamation in conformity with the parameters established in the American Convention on Human Rights, the American Declaration on the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression.

229. The Jamaican government fully abolished the offence of criminal defamation when it passed the Defamation Bill on November 5, 2013 and is now the first independent Caribbean country to have no criminal defamation laws.⁵⁰⁹ This legislation replaces the Libel and Slander Act and the Defamation Act, both

⁵⁰⁸ Jamaica Observer, "Golden Age Home residents to benefit from health and wellness centre," December 18, 2013, available at: http://www.jamaicaobserver.com/news/Golden-Age-Home-residents-to-benefit-from-health-and-wellness-centre_15646708

⁵⁰⁹ Grenada abolished criminal libel in 2012 but maintains laws criminalizing seditious libel and insult of the monarch; Griffen, Scott, "Jamaica decriminalizes defamation: IPI hails partners for major victory of country's libel laws, urges Caribbean neighbours to follow suit", International Press Institute Press Release, November 6, 2013, available at:

initially enacted in 1851 and 1961 respectively. The IACHR has indicated that the new law is a significant advance for the protection and strengthening of freedom of expression in the region, and underscores the importance of bringing national laws into line with the highest international standards on the issue.⁵¹⁰ The IACHR welcomes this reform and hopes for reduced criminalization of human rights defenders and media workers.⁵¹¹

230. The State took action to adopt the recommendations of the Joint Select Committee. The amended legislation decriminalizes defamation offenses and establishes advanced criteria for the resolution of civil cases in accordance with the highest principles of international law specifically regarding⁵¹²:

- Elimination of the distinction between slander and libel and establishing a single cause of action - defamation;
- The reduction of the limitation period for actions from six years to two years from the publication of the defamatory statement (the limitation period may be extended in the interests of justice);
- Replacement of the defense of justification with the defense of truth;
- The introduction of the defense of innocent dissemination to a defendant whose capacity was merely a distributor, employee or agent of a secondary publisher, and when the defendant neither knew, nor ought to have known, that the statement was defamatory and the said lack of knowledge was not due to negligence;
- Provision that a civil judge must consider principles such as *exceptio veritatis*, fair and accurate reports, and malice when dealing with media outlets that publish specially protected speech regarding matters of public interest.
- A stipulation that damages shall be at the sole discretion of judges rather than juries; and
- Introduce new remedies such as a declaratory order and a correction order.⁵¹³

231. The Office of the Special Rapporteur on Freedom of Expression views this legislative advance positively, and finds that it contributes decisively to the protection of freedom of expression.⁵¹⁴

B. Access to Information Act

232. Civil society organizations in Jamaica have indicated that the review and reformatting of the Access to Information Act has languished for approximately five years following a Parliamentary Committee.

<http://www.freemedia.at/home/singleview/article/jamaica-decriminalises-defamation.html>; IACHR, Annual Report of the Inter-American Commission on Human Rights 2013: Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression OEA/Ser.L/V/II.149 Doc. 50, December 31, 2013, para 557, available at: http://www.oas.org/en/iachr/expression/docs/reports/annual/2014_04_22_%20IA_2013_ENG%20FINALweb.pdf

⁵¹⁰ IACHR, Press Release R85/13. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=934&IID=1>

⁵¹¹ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁵¹² IACHR, Press Release R85/13. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=934&IID=1>

⁵¹³ IACHR, Press Release R85/13. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=934&IID=1>; Desai, Krishna, "The new law of defamation in Jamaica," Jamaica Observer, January 22, 2014, available at: <http://m.jamaicaobserver.com/mobile/business/The-new-law-of-defamation-in-Jamaica-15839916>

⁵¹⁴ IACHR, Press Release R85/13. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=934&IID=1>

The recommendations have not come back to parliament to be implemented into law despite civil service commitment to it at different levels and different places.

233. The State has indicated that it is committed to providing the information, unless there are reasons not to do so, such as security. The IACHR encourages the State to take all actions necessary to comply with international standards regarding access to information.

234. In the framework of the hearing "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica" held on October, 28, 2014, under the 153rd Period of Sessions, the Inter-American Commission received information on the Access to Information Act. According to the applicant organizations, "[t]he review and reformatting of the Access to Information Act has languished now for something like four or five years following a Parliamentary Committee. The recommendations have not come back to Parliament to be implemented into law."⁵¹⁵ For its part, the State reported that "the Access to Information Act is in place" and there have been strengths and weaknesses acknowledged in respect of it. Nevertheless, the State indicated that it is committed to providing the information, unless there are reasons not to provide the information such as security.⁵¹⁶

235. The IACHR remains committed to ensuring that there are guarantees for effective compliance to the right to information for citizens and civil society organizations.⁵¹⁷

C. Freedom of Expression and hate speech

236. The Office of the Special Rapporteur expresses its concern over the promotion in some media outlets of outwardly discriminatory and homophobic messages that could incite violence against members of the LGBTI community, especially when those messages come from shapers of public opinion. During 2013 and 2014⁵¹⁸ the Office of the Special Rapporteur continued to receive information about the systematic publication by some media articles with messages that could foment hatred and violence against members of the LGBTI community. According to the information received, during 2013 some media systematically published articles that could incite violence against LGBTI individuals, by disseminating messages that encourage hatred against the members of that community.⁵¹⁹

237. In the framework of the hearing "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica" held on October, 28, 2014, under the 153rd Period of Session, the Inter-American Commission and its Special Rapporteur received information on the constant stigmatizing or hate speech reproduced by media regarding LGBTI. According to the applicant organizations, State authorities have been ommissive in promoting positive speeches to reduce the discrimination and stigma against LGBTI people. For its part, the State reported that the government is aware of the debate in Jamaica on the rights of LGBTI people and has made efforts to guarantee the right to equality for these people. Regarding public discussions on the subject, the State reported that takes the position that these are issues covered by the right to freedom

⁵¹⁵ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁵¹⁶ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁵¹⁷ IACHR, Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica," 153rd Regular Session, October 28, 2014.

⁵¹⁸ Detailed information on the events that occurred during the year 2014 can be accessed in the Annual Report of the Office for the Freedom of Expression from 2014.

⁵¹⁹ IACH. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149.Doc.50.December 31, 2013. Para. 560.

of expression in the context of private and independent media and acts in the debate only in the scope of institutions subject to the government's control.⁵²⁰

238. The Office of the Special Rapporteur notes that these types of discriminatory statements can potentially cause violence, depending on the context in which they are disseminated.⁵²¹ In this respect, hate speech directed at against individuals on the basis of their sexual orientation or gender identity that constitutes the incitement of violence is not protected by freedom of expression⁵²². Article 13(5) of the American Convention on Human Rights establishes that: “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

239. In addition, article 9 of the Inter-American Democratic Charter states that: “[t]he elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.” Similarly, the Office of the Special Rapporteur recalls that principle 6 of the IACHR's Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, *inter alia*, that journalistic activities must be guided by ethical conduct.

240. The Inter-American Commission recommends that the State adopt a comprehensive approach that go beyond legal measures, including preventive and educational mechanisms, in order to effectively combat hate speech that constitutes incitement to violence. In particular, the State shall contribute decisively to the building of a climate of tolerance and respect in which LGBTI people and those who defend their rights can express their thoughts and opinions without fear for doing so.

241. Also, the Inter-American Commission calls on the State, the civil society and the media to proactively facilitate the counter-speech of these individuals who are systematically targeted by hate speech.

⁵²⁰ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

⁵²¹ In the context of Jamaica, there have been numerous attacks and assaults against persons because of their sexual orientation or gender identity. One example is the case of the murder of Dwayne Jones on July 22, 2013. IFEX/Human Rights Watch. August 1, 2013. [Cross-dressing teenager murdered in Jamaica](#); Huffington Post/AP. August 11, 2013. [Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report](#).

⁵²² IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 58-59.