



WAITING IN VAIN

JAMAICA: UNLAWFUL POLICE KILLINGS AND RELATIVES' LONG STRUGGLE FOR JUSTICE

AMNESTY
INTERNATIONAL



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1. EXECUTIVE SUMMARY

This report examines a persistent pattern of unlawful killings by members of the Jamaican Constabulary Force (JCF) and the impact of this violation of the right to life on the families left behind. Young men and teenagers from inner-city, disenfranchised neighbourhoods continue to account for the vast majority of victims of unlawful killings by police. Their relatives, and in particular their women relatives, are left to face a long struggle for justice as well as frequent intimidation and harassment by the police.

Amnesty International has reported on extrajudicial executions in Jamaica for more than two decades. As this report shows, despite a recent reduction in the number of killings by police, there has been limited progress in addressing police impunity, lack of accountability and policing methods that fall far short of international standards. Three out of every five people shot by police die from their injuries. At the time of writing, 92 people had been killed by law enforcement officials between January and October 2016, this is an average of 2 killings by police a week.

Until 2014, more than 200 people were killed each year by Jamaican police officers. While it is important to acknowledge the high levels of violence in Jamaica and the difficult situations faced by police officers, it remains the case that killings by law enforcement officials represent a significant percentage of the country's homicides; approximately 8% of all killings on the island in 2015 were at the hands of the police.

In 2014 and 2015, killings by law enforcement officials halved. This is a welcome development. However, Amnesty International's research found no evidence of improved internal accountability within the police or changes in the way the police operate. Many of those interviewed by Amnesty International believe the reduction in killings could be the product of a deterring effect created by improved investigation and prosecution by the Independent Commission of Investigations (INDECOM), a police oversight mechanism established in 2010, rather than structural reform of the internal operation of the police.

This research finds that long-standing and well-documented unlawful practices by the police continue. The Jamaican police continue to stigmatize and criminalize communities because they live in poverty. After fatal shootings, police tamper with the crime scene and leave victims to "bleed out."

It continues to be alleged that extrajudicial executions are used as an alternative to arrest and lengthy criminal proceeding by on and off-duty law enforcement officers. It is widely believed this is a strategy sanctioned by the state to "get rid of criminals." Numerous witnesses and relatives of those killed by the police interviewed by Amnesty International, described the police allegedly involved as "killa police" or "designated killers." According to INDECOM, in at least one case a single police officer has been implicated in 22 separate police shootings.

Information gathered for this report, points to a strong likelihood of the existence of individual police officers or even units tasked with carrying out extrajudicial executions on the orders of some governmental authorities or with its complicity or acquiescence. At the very least, it points to a complete failure of internal accountability within the JCF to review the conduct of its officers and prevent the deployment of officers unsuitable for duty.

Over the past six years, Jamaica has put in place stronger institutional mechanisms to address killings by police through the establishment of INDECOM and a Special Coroner's Court to conduct inquests into alleged killings by police. However, INDECOM has repeatedly been challenged by the police and other state bodies; chronic underfunding has undermined the effectiveness of the Special Coroner's Court; and the failing criminal justice system continues to deny victims' relatives access to justice, truth and reparation.

Impunity for the killing of young men from marginalized communities has become normalized in Jamaica. Against a background of pervasive criminalization and discrimination against those living in poverty, such killings have come to be viewed by some as a necessary part of being "tough on crime". However, women and their families living in marginalized communities interviewed for this report refute the legitimacy and effectiveness of this approach.

The impact of killings by police on whole families is profound and, given that many heads of households in Jamaica are women, the burden of pursuing justice often falls to the mothers, sisters, aunts and wives of victims.

Amnesty International interviewed more than 50 relatives (39 women and 14 men) of 28 people believed to have been unlawfully killed by the police between 2003 and 2014. Most had experienced intense and pervasive harassment and intimidation by police in their pursuit of justice, causing them further mental suffering.

In some of the cases documented for this report, police treatment of victims' families constitutes cruel, inhuman, degrading treatment or punishment (ill-treatment). Relatives interviewed by Amnesty International described many forms of harassment and intimidation from psychological harassment to arrest and unlawful detention to attacks and alleged unlawful killings.

Some relatives, including children, of those unlawfully killed by the police were eyewitnesses to the ill-treatment or execution by the police of their family members.

In at least one case, families said male relatives of the victim had been unlawfully detained and beaten in detention. Some families told of women relatives who had left the island to escape intense police intimidation and harassment, others had moved out of their communities. Families with fewer resources had little option but to remain in their communities and were living in extreme fear of reprisals.

In some other cases, for example when police harass or intimidate families in their homes or during funerals, the state further violates the right to private and family life. Such treatment of victims' families creates a culture of fear and silence, which in turn entrenches impunity for human rights violations by police.

In interview with Amnesty International, senior police representatives flatly denied receiving any reports of intimidation and harassment by police of relatives of the victims of killings by police.

The Jamaican Minister of Justice's proposed reforms to the criminal justice system are welcome. But reform must also include practical measures that protect witnesses, and guarantee quicker and equal access to justice for relatives of people allegedly killed by state agents.

KEY RECOMMENDATIONS

Jamaica is at an important crossroads. June 2016 saw the publication of a report by a Commission of Enquiry into events during a state of emergency in 2010 in which 69 people were killed following a joint police-military operation. The long-overdue report provided the prospect for truth and reparation for those whose human rights were violated and an opportunity for reflection and action at the highest levels of the state for police reform. By October 2016, the government had established a committee to consider the reforms proposed by the Commission of Enquiry.

The experiences recounted by families that lie at the heart of this report underscore the urgent need for Jamaica to adopt the Commission's recommendations regarding police reform, and to take immediate steps to address serious failings of internal accountability in the JCF through strengthening the structures that are responsible for police oversight.

They also highlight the need for the authorities to take measures to guarantee access to justice for relatives of the victims of unlawful police killings and to protect relatives pursuing justice from police intimidation and harassment and other ill-treatment.

The Jamaican authorities now have a unique opportunity to end endemic police impunity and to ensure justice for the women and families whose lives and communities have for so long been scarred by the systemic failures outlined in this report.

Detailed recommendations are included at the end of this report.

METHODOLOGY

The research on which this report is based was carried out between December 2015 and October 2016, during three separate visits to Jamaica.

Amnesty International spoke to a wide range of experts and authorities. However, the bulk of testimonies gathered were from women relatives of men allegedly extrajudicially executed by the police.

In April 2016, Amnesty International carried out in-depth interviews with more than 50 relatives (39 women and 14 men) of 28 people believed to have been unlawfully killed by police between 2003 and 2014. Most families asked that their identity be protected for fear of police reprisals.

In July 2016, Amnesty International held a focus group with eight women aged between 23 and 50 from an inner-city marginalized community to understand how they experience police violence in their community. The women asked that Amnesty International not name them or their community for fear of further police harassment.

Amnesty International sought to corroborate testimonies with official documentation including post-mortem reports, reports from the Bureau for Special Investigations (BSI), reports from the Independent Commission of Investigations (INDECOM), photos, videos and media coverage of the cases. Amnesty International also had access to secondary sources, such as academic articles, local Non-Governmental Organizations (NGOs) and UN reports and INDECOM data and analysis.

Amnesty International and the Kingston-based human rights organization Jamaicans for Justice also convened a group meeting with approximately 20 family members initially interviewed in April 2016, to bring together families of people killed by the police and to hear their recommendations for addressing crimes under international law and human rights violations. Many of the recommendations presented in this report were made by family members of people killed by the police.

Amnesty International held interviews and meetings with a wide number of specialists, lawyers, local NGOs, activists, academics, government officials and embassies, to discuss security concerns in the context of unlawful killings by police. These included the Public Defender, INDECOM, the Commissioner of Police and other senior police officers, the Jamaica Police Federation, the Police Civilian Oversight Authority, the Director of Public Prosecution (DPP), the current and former Ministers of Justice, the UN Office of the High Commissioner for Human Rights in Jamaica, representatives from the Canadian, UK and US embassies and the European Union (EU), and two senior public servants who spoke to Amnesty International on the condition of anonymity.

During this research, interviewees spoke both English and Jamaican patois. Amnesty International has cited those interviewed according to the way people spoke to the organization and has only clarified meanings of the words used in patois where necessary to facilitate understanding for readers not familiar with patois.

OBSTACLES TO AMNESTY INTERNATIONAL'S RESEARCH

Amnesty International complied with the request to advise the Ministry of Foreign Affairs of all its requests for meetings with government officials.

The organization formally requested meetings with the Minister of National Security twice, in April and July 2016. On the first occasion the Minister was unable to meet, on the second occasion Amnesty International received no response despite repeated calls to the office to try to secure a meeting.

Amnesty International also requested, through the Commissioner of Police, a focus group with junior police officials (constables, corporals and sergeants) to understand police challenges and operations in the context of high levels of violent crime from their perspective. Amnesty International received no response to this request.

Amnesty International also made requests under Jamaica's Access to Information Act (2002) to the DPP, the Ministry of Justice and Ministry of National Security. The organization received replies and the requested information from the Ministry of Justice. Just before going to press, more than 60 days after the request was made (double the period within which the state should respond according to the Act) only some of the information requested had been received from the Ministry of National Security. Despite repeated reminders, at the time of writing, Amnesty International had not received the information requested from the DPP, exceeding the stipulated time limit for providing a response set out in the Act.

ACKNOWLEDGEMENTS

Amnesty International would like to thank the family members and witnesses who agreed to tell their stories. Many were still visibly traumatized by the death of their relatives and the subsequent violations of their human rights. The fact that they were willing to speak about their experiences is a testament to their courage and determination to see justice done.

We would like to thank Jamaicans for Justice for its support and assistance and the NGO's former lawyer who provided invaluable support with case analysis and scheduling interviews.

We wish also to thank the independent expert pathologist who, at Amnesty International's request, reviewed autopsy reports in several of the cases mentioned in this report.

TERMINOLOGY

The prohibition of the arbitrary deprivation of life, as provided by the International Covenant on Civil and Political Rights,¹ is important because it helps to distinguish extrajudicial executions from killings which are not forbidden under international law, such as killings resulting from the use of reasonable force in law enforcement, killings in armed conflict not forbidden under the international humanitarian law and the use of the death penalty in those cases where internationally established procedural safeguards and restrictions are observed.²

An **extrajudicial execution** is the unlawful and deliberate killing of a person carried out by state agents, or by people acting with the authorization, support or acquiescence of state agents. An extrajudicial execution is a crime under international law.³ **Unlawful killings** are killings which are unlawful by international human rights or humanitarian standards, and include killings resulting from excessive use of force by law enforcement officials.

¹ International Covenant on Civil and Political Rights (adopted 16 Dec. 1966, entered into force 23 March 1976), 999 UNTS 171, Article 6.

² See Amnesty International, 14-Point program for the prevention of extrajudicial executions, AI Index: POL 35/002/1993

³ See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989). The term "extra-legal, arbitrary and summary executions" embraces what Amnesty International refers to as extrajudicial executions

2. A DECADES-OLD EPIDEMIC OF VIOLENCE

“This is a force that was born out of colonialism ... So why do we believe their operation in the twenty first century would not bear traces of these colonial beliefs unless you were actively doing something to change the type of policing that we were involved in... No one wants to do the work to change a system that has been operating without accountability for years.”

Sister of Nakiea Jackson, cookshop operator killed by police in 2014

Jamaica has one of the highest murder rates in the world. In 2015, there were 43 murders per 100,000 of the population.⁴ Despite a gradual fall of 35% in the homicide rate between 2009 and 2013,⁵ Jamaica still ranks fourth in the Americas, behind Honduras, El Salvador and Venezuela in terms of murder rates.⁶

The vast majority of those killed by the police are young men from inner-city, disenfranchised neighbourhoods.⁷

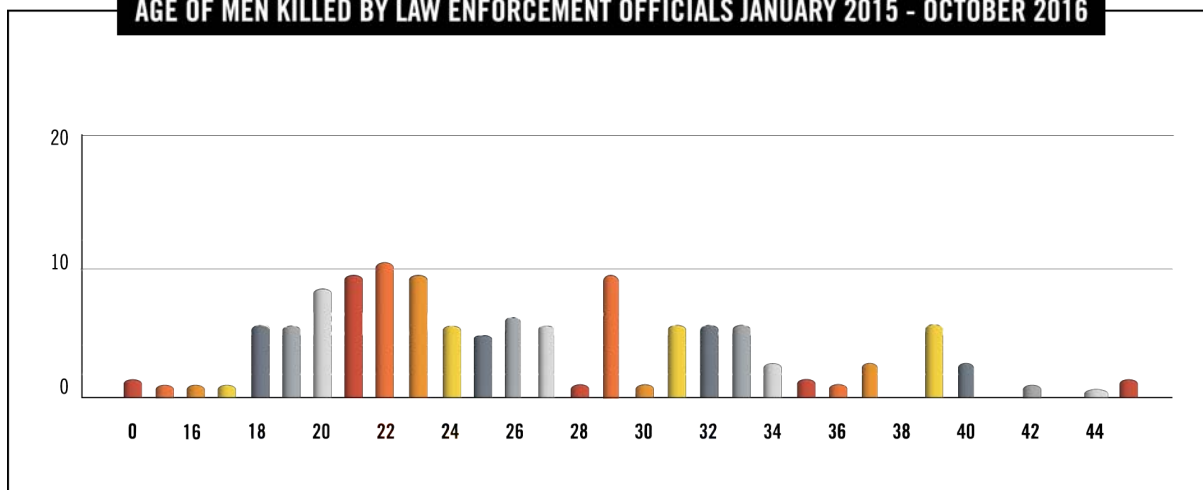
⁴ The murder rate per 100,000 inhabitants was calculated based on total murders reported by the Jamaica Constabulary Force in its Annual Report 2015, available at www.jcf.gov.jm/resources/jcf-annual-report-2015, and population estimates by the United Nations' Population Division in its World Population Prospects: The 2015 Revision, available at <https://esa.un.org/unpd/wpp/DataQuery/>. The Jamaica Observer reported 45 homicides in 100,000 for 2015, See: 'Jamaica homicides jump 20 per cent, highest level in 5 years', 11 January 2016, Available at: http://www.jamaicaobserver.com/news/Jamaica-homicides-jump-20-per-cent--highest-level-in-5-years_48331

⁵ United Nations Office on Drugs and Crime, Global Study on Homicide: Trends, Context, Data, 2013, p.34

⁶ Murder rates for El Salvador, Honduras and Venezuela in 2015 were 108.6, 63.8 and 57.1 per 100,000 inhabitants, respectively. They were calculated based on population estimates by the United Nations' Population Division in its World Population Prospects: The 2015 Revision, available at <https://esa.un.org/unpd/wpp/DataQuery/>, and murder figures published by Instituto de Medicina Legal (El Salvador), available at www.transparencia.oj.gob.sv/portal/transparencia.php?opcion=13, Observatorio de la Violencia (Honduras), available at www.iudpas.org/boletines/boletines-nacionales, and Ministerio Público de Venezuela, available at www.mp.gob.ve/c/document_library/get_file?uuid=010ba734-247c-4da1-859f-1ae55772d7b5&groupId=10136.

⁷ See, *Amnesty International, JAMAICA: Killings and violence by Police: How many more victims?*, (Index: AMR 38/007/2001); *Amnesty International, 'Let them kill each other': Public security in Jamaica's inner-cities*, (Index: AMR 38/001/2008); *Amnesty International, Public Security Reforms and Human Rights in Jamaica*, (Index: AMR 38/001/2009); and *Amnesty International, Jamaica: A long road to justice? Human Rights violations under the state of emergency*, (AMR 38/002/2011)

AGE OF MEN KILLED BY LAW ENFORCEMENT OFFICIALS JANUARY 2015 - OCTOBER 2016



Source: INDECOM. The chart shows age distribution of men killed by law enforcement. During the period 193 men were killed by law enforcement. In the same period four women were killed by police⁸.

Data from the Independent Commission of Investigations (INDECOM) suggests that when women are the target of killings by police, it is often in the context of intimate partner killings by off-duty officers.⁹

Most homicides are related to organized crime, robbery or other criminal acts.¹⁰ Violence is driven by inter-gang and intra-gang fighting linked to gun and drug trafficking and more recently lottery scamming,¹¹ with particular areas such as Western Kingston and St Catherine being the focus of much of this violence.¹² During 2016 there was a rise in homicides in Montego Bay, an important tourist region for Jamaica, prompting some politicians to call for a state of emergency.¹³

Consecutive Jamaican governments and political leaders have helped to create an environment in which gang violence flourishes, particularly in “garrison” communities.¹⁴ For years the approach of the police in marginalized communities has been “to fight violence with violence.”¹⁵ A report published in June 2016 by the Commission of Enquiry into the events that took place in Western Kingston during a state of emergency declared on 23 May 2010 provides careful analysis of the roots of garrison communities, which have been described as a “state within a state”, and makes recommendations to the government for dismantling them.

⁸ INDECOM, Email, 25 October 2016

⁹ INDECOM, Email, 25 October 2016

¹⁰ United Nations Office on Drugs and Crime, *Global Study on Homicide: Trends, Context, Data*, 2013, See Fig. 2.2: Shares of homicide, by typology, selected countries (2001-2012), p.41

¹¹ According to the US Embassy in Jamaica, lottery scamming is where “scammers lead victims to believe they have won a drawing or lottery, but the cash or prizes will not be released without upfront payment of fees or taxes. Scammers frequently target the elderly or those with disposable income.” See: <https://kingston.usembassy.gov/service/scams.html>

¹² Interview with Commissioner of Police and senior command, 15 April 2016

¹³ Jamaica Gleaner, ‘Sinclair Renews Call For State Of Emergency... As Murders Rock MoBay,’ 15 August 2016, Available at: <http://jamaica-gleaner.com/article/lead-stories/20160815/sinclair-renews-call-state-emergency-murders-rock-mobay>

¹⁴ ‘Garrisons’ are communities under the control of one or other of the political parties. Party control is sometimes enforced by heavily armed gangs who force people in the community to vote for the party in control.

¹⁵ Amnesty International, ‘Let them kill each other’: *Public security in Jamaica’s inner-cities*, (Index: AMR 38/001/2008) p.15

Since 2000, law enforcement officials in Jamaica have allegedly killed over 3,000 people. Killings by police – many of which may amount to extrajudicial executions – represent a high percentage of overall killings in Jamaica. Although there has been a substantial reduction in killings by police in recent years, it is unclear whether this indicates a sustainable development.

KILLINGS BY LAW ENFORCEMENT OFFICIALS AS A PERCENTAGE OF OVERALL KILLINGS IN JAMAICA					
	2011	2012	2013	2014	2015
REPORTED MURDERS	1133	1099	1201	1005	1207
KILLING BY LAW ENFORCEMENT	210	219	258	115	101
% BY LAW ENFORCEMENT	19%	20%	21%	11%	8%

Source: JCF¹⁶ and INDECOM¹⁷

Between 2005 and 2013, more than 200 people were killed by police each year. A 2008 report by the George Washington Law School and Jamaicans for Justice stated: “What had been a borderline human rights emergency in 2000 had become, by early 2008, a full-blown humanitarian crisis.”¹⁸

To Amnesty International’s knowledge, only 2 police officers have been convicted of murder since 2000.¹⁹ Between 1999 and 2008, only one police officer was convicted of murder.²⁰ Since INDECOM was established in 2010, it has secured one conviction of a police officer for murder, and 12 other convictions of officers for breaches of the INDECOM Act, and other criminal offences.²¹

There have been incremental improvements in the state’s response to killings by police over the past 20 years and in 2014 and 2015 the annual number of killings by law enforcement officials was halved compared with the previous 10 years. However impunity for killings by police remains widespread.

¹⁶ Jamaica Constabulary Force, Annual Report, 2015, p. 8

¹⁷ INDECOM, Quarterly Report to Parliament, ‘Demanding Accountability’, 2012, p.10 and Email from INDECOM, 13 March 2016

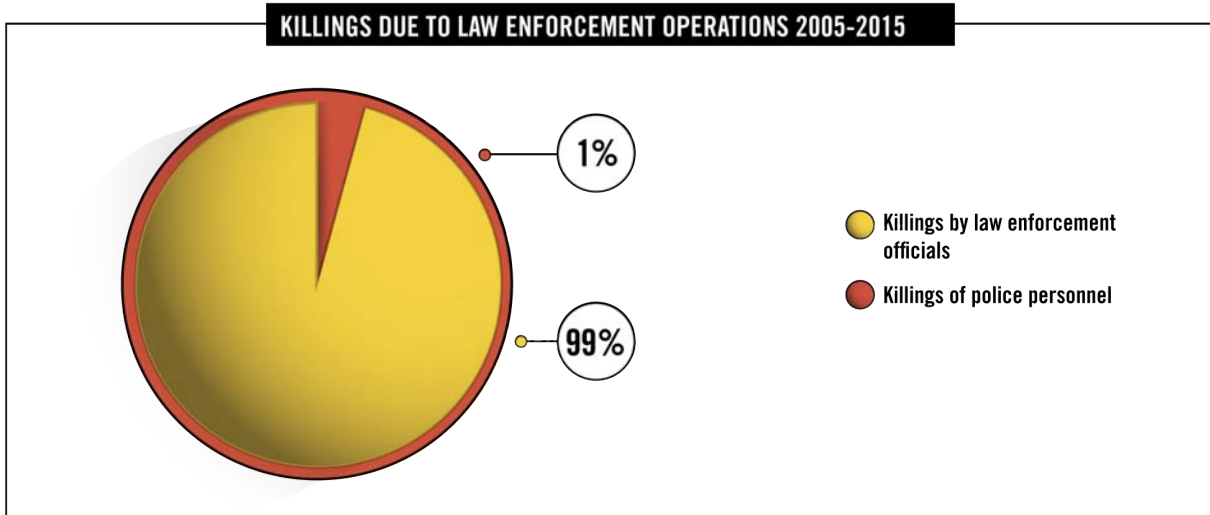
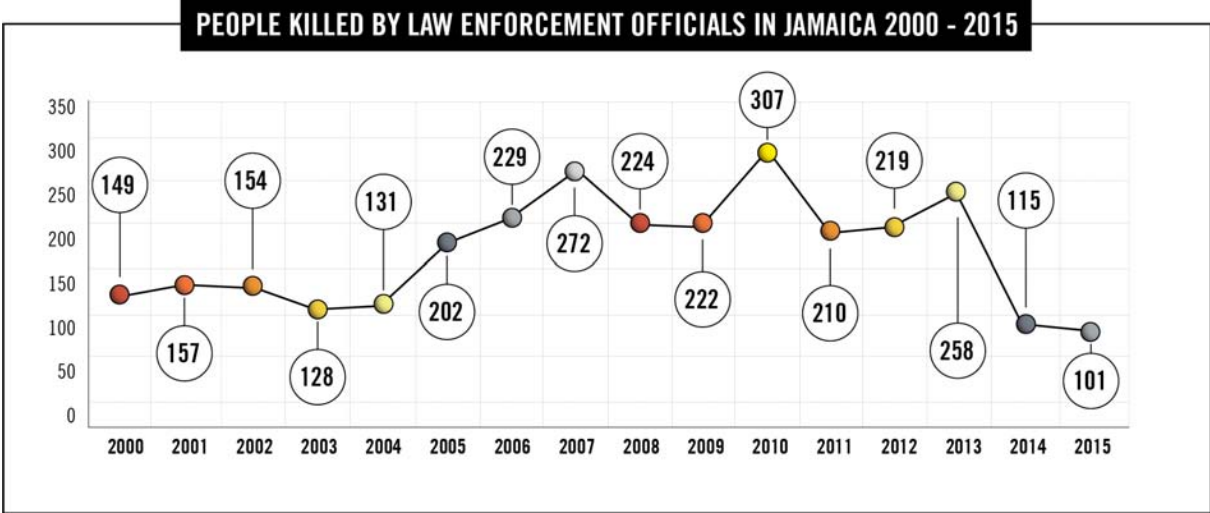
¹⁸ The International Human Rights Clinic of the George Washington University Law School and Jamaicans for Justice, ‘Killing Impunity: Fatal Police shootings and extrajudicial executions in Jamaica: 2005-2007’, 20 March 2008, p.3 (Hereinafter: George Washington University Law School/JFJ, Killing Impunity)

¹⁹ Amnesty International requested further data regarding convictions of police officers from the DPP under an Access to Information request, however, at the time of publishing this information had not been received, as outlined in the methodology.

²⁰ Amnesty International, ‘Let them kill each other’: Public security in Jamaica’s inner-cities, (Index: AMR 38/001/2008) p.27 and George Washington University Law School/JFJ, Killing Impunity, p.4

²¹ INDECOM, Email, 1 November 2016, and INDECOM, Press Release, ‘INDECOM gets 1st murder conviction’, 13 April 2016

Police in Jamaica operate in difficult conditions. According to senior police, long hours, low pay, limited respect for work-life balance and dangerous working environments make it very difficult to retain officers. In 2015, 415 police resigned.²² The Commissioner of Police told Amnesty International: “Turn-over is more than we can tolerate”²³ a senior officer commented that the result is that the JCF has to continuously train and retrain personnel²⁴.



Source: Amnesty International,²⁵ and INDECOM²⁶.

²² Jamaica Constabulary Force, Statistics and Information Management Unit, Planning Research and Development Branch, 23 August 2016, ‘Attribution for Period 2013 to 2015’. Information received under an Access to Information Request made by Amnesty International.

²³ Interview with Commissioner of Police and senior command, 15 April 2016

²⁴ Deputy Commissioner of Police, Email, 4 August 2016.

²⁵ Amnesty International, ‘Let them kill each other’: Public security in Jamaica’s inner-cities, (Index: AMR 38/001/2008) p.21 provides data between 2000 and 2007 (original source BSI).

²⁶ INDECOM, Quarterly Report to Parliament, ‘Demanding Accountability’, 2012, p.10 and Email from INDECOM, 13 March 2016

Marginalized, garrison communities can be dangerous environments for police. A Deputy Commissioner of Police told Amnesty International that it is extremely difficult for the police to operate in “unstructured communities” where residents live in sub-standard houses not accessible by paths or cars, with poor amenities and high unemployment.²⁷

Many police operations to respond to organized crime place police officers at risk. Between 2005 and 2015, 27 on-duty police officers were killed in such operations.²⁸ However, during the same period more than 2,359 people were killed in police operations. Use of lethal force by police officers resulting in some of these deaths may have complied with international standards. But, in many cases the findings of Jamaicans for Justice and Amnesty International suggest that the killings may amount to extrajudicial executions.

²⁷ Interview with Commissioner of Police and senior command, 15 April 2016

²⁸ Jamaica Constabulary Force, Statistics and Information Management Unit, Planning Research and Development Branch, 23 August 2016. Received following an Access to Information Request by Amnesty International from the Ministry of National Security.

CHALLENGING IMPUNITY

Jamaica's history of unlawful killings by police is also a story of determined struggles, especially by the families of victims, to overcome impunity.

Michael Gayle, who had been diagnosed with schizophrenia, was severely beaten by police and soldiers after he approached a curfew barricade. He died on 23 August from peritonitis secondary to traumatic rupture of the stomach caused by beatings from gun butts, punches and kicks with military boots, according to an independent pathology report.²⁹ Lobbying by Jamaicans for Justice ensured that, for the first time, an independent pathologist was allowed to observe a post-mortem in Jamaica, as required by international standards. In 2005, the Inter-American Commission on Human Rights concluded that Jamaica failed to protect the right to life of Michael Gayle and to undertake a prompt, effective and impartial investigation, and that it violated the right to fair trial and judicial protection.³⁰ The Commission's recommendations strongly supported calls for an independent police oversight mechanism in Jamaica.

The mother of 13-year-old Janice Allen died in 2010 after a 10-year battle to obtain justice for her daughter. Janice was shot while crouching behind a lamppost with her sister as police opened fire in Trench Town.³¹ Janice's mother was publically criticized for refusing to allow an autopsy to take place until she could get an independent pathologist to observe it. When local courts acquitted a police officer of the killing, the case went to the Privy Council,³² which recommended that the DPP consider another trial. Janice's mother did not live to see justice for her daughter.³³

The Tivoli Committee, a group of residents from Tivoli Gardens, Western Kingston, took to the streets in protest at killings by the Jamaica Defence Force and the JCF during the State of Emergency declared in May, purportedly to arrest a notorious drug Don. The operation lasted several days and left at least 69 people dead, including Sheldon Davis.³⁴ The Tivoli Committee called for those responsible at the top of the chain of command to be prosecuted.

The Independent Commission of Investigations (INDECOM Act) was passed by Parliament. It repealed the Police Public Complaints Act and established an independent police oversight mechanism. This became operational in late 2010. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Jamaica and called on "the highest authorities" to issue a public condemnation of torture and ill-treatment, including excessive use of police force.³⁵

A Special Coroner's Court was established to conduct inquests, specifically to determine the cause of death in killings alleged to have been committed by agents of the state.

In December, a long-overdue Commission of Enquiry began into the joint operation during the state of emergency in 2010. Its report, published in June 2016, made a series of recommendations on police reform.

Almost 100 police officers have been charged by INDECOM with criminal offences but, due to chronic delays in the criminal justice system, only a handful have come to trial.

²⁹ C. Gomes, 'Police Accountability in the Caribbean – Quis custodiet ipsos custodiet? Following the thread to accountability or unravelling the cloth of corruption?', 2016 (Hereinafter: C. Gomes, *Police Accountability in the Caribbean*)

³⁰ Inter-American Commission on Human Rights, Report N° 92/05, Case 12.418, Merits, Micheal Gayle, Jamaica, October 24, 2005

³¹ Amnesty International, *JAMAICA: Killings and violence by Police: How many more victims?*, (Index: AMR 38/007/2001), p.12

³² The final court of appeal for Jamaica

³³ Jamaica Observer, 'Janice Allen's mom dies', 21 June 2010, Available at: <http://www.jamaicaobserver.com/news/Janice-Allen-s-mom-dies>

³⁴ Sheldon Davis' case was first published in Amnesty International, *Jamaica: A long road to justice? Human Rights violations under the state of emergency*, (AMR 38/002/2011), p. 14. Sheldon Gary Davis, aged 29, was killed by the security forces on Sunday, 30 May 2010 in Denham Town, West Kingston, after he had been taken into custody to be, 'checked out'. The inquest is still pending on his case, 6 years later.

³⁵ Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Sixteenth session, Agenda item 3, 2010

1999

2000

2010

2011

2014

2016

3. HOW THE POLICE KILL

THE IMPACT ON WOMEN OF POLICE OPERATIONS

“Nuff [lots of] mothers a grieve right now for police that kill their children”

Woman from marginalized community in Kingston

Extrajudicial executions indisputably impact on the victim’s entire family. In Jamaica, where families from low-income households are predominantly female-headed,³⁶ it is frequently women who are left to pursue justice when their sons, brothers, nephews and partners are killed.³⁷

A 2015 study by the Women’s Resource and Outreach Centre/United Nations Development Programme concluded that the lives of girls and young women in Western Kingston “are plagued by assault and fear of abuse.” Assault, robbery and rape were among the most commonly reported offences against women.³⁸ And abuse from police and soldiers was one of the ways women defined their own vulnerability.³⁹

Many of the women interviewed by Amnesty International for this report were traumatized by the suffering they had seen inflicted by police on male relatives, although some had also experienced direct abuse by the police. Girls and young women are particularly affected by violence around them and many children still experience trauma relating to the 2010 events.⁴⁰

Many of the women interviewed by Amnesty International described the way in which police stigmatize and criminalize their communities for being poor. “They have no respect.” “They kick off doors, without a warrant.” “If you try and answer them back they try and brutalize you and accuse you of attacking the police.” “The young people an dem fraid [are afraid] of the police.” “The government gives them power to kill we.” “But there are good decent people living in the ghetto.” These were phrases repeated innumerable times to Amnesty International.

³⁶ For example, in Tivoli Gardens over 62% of households are headed by females; while in Denham Town and Central Downtown more than half of households are female headed. See: The Women’s Resource and Outreach Centre/UNDP, *Assessing the Vulnerability of Women and Girls in Western Kingston*, February 2016, p. 6 (Hereinafter: WROC/UNDP, *Assessing Vulnerability of Women*)

³⁷ “Baby mother” refers to the mother of a man’s child, usually that he has outside of marriage.

³⁸ WROC/UNDP, *Assessing Vulnerability of Women*, p.16

³⁹ WROC/UNDP, *Assessing Vulnerability of Women*, p.18

⁴⁰ WROC/UNDP, *Assessing Vulnerability of Women*, p. 23

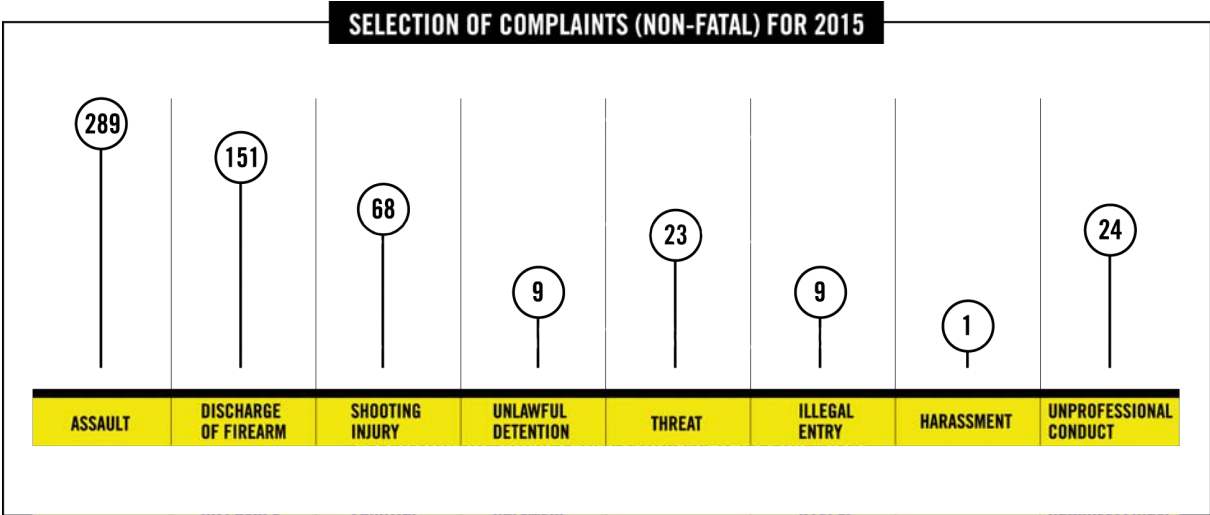
Other women told Amnesty International: “Dem is no good. Instead of come to build peace, dem come to build war... Whenever they hear a community is violent, they come in with the intention to kill.” Another women said: “Some of dem come in their uniform. But when they come to kill yuh pickney [your child], they take off their badge... and they come in a mask... One police comes with three guns, so when they kill yuh pickney them put one on him. Nuff [lots of] mothers a grieve right now for police that kill their children.”

“Police should follow their own code of ethics. Ina de ghetto dem no know how tuh deal wid people.”

Mother of a man shot and killed, allegedly by police

These testimonies are consistent with the data collected by INDECOM. Banging down doors and entering homes without search warrants remain routine. In 60% of operations carried out between January 2012 and July 2013, police had not obtained a search warrant.⁴¹ During that same period, in the vast majority of cases the victim did not open the door and the police did not call the victim out.⁴²

A review of a selection of complaints received by INDECOM during 2015 reflected these trends. It also suggests significant under-reporting of complaints of illegal entry, harassment and arbitrary detention.



Source: Compiled from INDECOM Quarterly Reports, 2015⁴³.

For many women, raising male children as single parents in such violent contexts is difficult. The practice by police units of entering communities and separating young men and boys from their mothers and protectors is a long-standing one. The Public Defender told Amnesty International: “The way the police operated in Tivoli, separating boys from the protection of their mothers, carting them off to detention centres... was offensive.”⁴⁴

⁴¹ INDECOM, Command Responsibility for the Use of Force: INDECOM Special Investigations 2014 and Annual Financial Reports, 2014, p16 (Hereinafter: INDECOM, Command Responsibility).

⁴² INDECOM, Command Responsibility, p. 18

⁴³ INDECOM Quarterly, January to March 2015, Available at: <http://www.indecom.gov.jm/1st%20INDECOM%20Quarterly.pdf>; INDECOM Quarterly: ‘On de-escalation and restraint,’ April to June 2015, Available at: <http://www.indecom.gov.jm/2nd%20INDECOM%20Quarterly.pdf>; INDECOM Quarterly: ‘Planned Police Operations,’ July to September 2015, Available at: <http://www.indecom.gov.jm/3rd%20INDECOM%20Quarterly.pdf>; INDECOM Quarterly: ‘Firing at Vehicles, Legal and Policy Issues,’ October to December 2015, Available at: <http://www.indecom.gov.jm/4th%20INDECOMQuarterlyReportComplete.pdf>

⁴⁴ Interview with Public Defender, 2 April 2016

One woman told Amnesty International that when police tried to arrest her 12-year-old son, she had to take out his birth certificate to prove his age to stop them arresting him. The woman also explained: “Sometimes you have to go out there naked and go on real bad [make a lot of fuss]” to stop a male relative being arrested. “If we are not all out, dem kill yuh pickney [your child].”

For decades the police account in most fatal shootings is that they were in the process of investigating an alleged crime when gunmen shot at them and they returned fire in self-defence. Accounts by witnesses continue to differ starkly from those provided by the police.

Incremental reforms over the past decade and active advocacy by civil society have brought some notable advances in the institutional framework to combat extrajudicial executions by police. However, the way police operate remains largely unchanged.

KILLING CRIMINAL SUSPECTS

“If they would hold a person and carry them to the station, and lock them up and charge them, fine. But they are gonna kill them.”

Aunt of Shaniel Coombs, killed by masked police in 2014

In numerous cases documented in this reports, as in previous Amnesty International reports, those killed by police were criminal suspects.

The severe backlogs and delays in the criminal justice system are a source of frustration for both the police and victims of crime. Statistics presented in recent months by the Ministry of National Security suggest that people alleged to have committed murders are carrying out more murders while on bail.⁴⁵ Added to this, the conviction rate for murder was only 15% in 2015.⁴⁶

In this context, it is often alleged that extrajudicial executions are used as an alternative to arrest and lengthy criminal proceedings by on and off-duty law enforcement officers. It is widely believed this is a strategy sanctioned by the state to “get rid of criminals”.

A number of witnesses told Amnesty International that victims had been the targets of death threats and severe and regular police harassment before they were killed. In some cases, families had reported this harassment to INDECOM or other authorities before the killing. Several victims had been arbitrarily detained and ill-treated in the weeks before they were shot. In one case, a family was exploring pursuing legal action for arbitrary detention when the victim was shot. In another, a mother told Amnesty International that her son had been shot by a police and detained until his gunshot wound healed only weeks before he was killed.

In various cases documented by Amnesty International for this report, victims were under police control shortly before being executed. In the case of **Matthew Lee**, described below, he was returning from a police station with two men, one of whom had gone there to fulfil a condition of his bail.

⁴⁵ Jamaica Observer, ‘Accused murderers committing similar crimes while on bail — Montague’, 17 June 2016, Available at: http://www.jamaicaobserver.com/news/Accused-murderers-committing-similar-crimes-while-on-bail---Montague_64218

⁴⁶ US State Department, Bureau of International Narcotics and Law Enforcement Affairs, ‘Country Report: Jamaica’, 2016, Available at: <http://www.state.gov/j/inl/rls/nrcrpt/2016/vol1/253277.htm>

“KILLA POLICE”

“The police [that came] were murderers. They were hit men. They were getting work to do to murder people.”

Brother of man killed by the police

In 2013, INDECOM charged 13 officers operating out of the Clarendon Division with murder. INDECOM said it had received information, from a former police informant and other witnesses, that police officers in Clarendon were selected by senior police officers, including Divisional Commanders, for the specific objective of murdering people.⁴⁷ It is alleged that the officers killed 60 people over a number of years⁴⁸ and that the policy of killing people was not linked to a specific Commander but was applied by all who took up office in the Division.⁴⁹ The former Commissioner of Police, Owen Ellington, resigned shortly after the officers were charged.⁵⁰ While such charges against police officers were unprecedented, allegations of the operation of “death squads” in Jamaica are not new.⁵¹

Numerous witnesses and relatives of those killed by the police interviewed by Amnesty International, described the police allegedly involved as “killa police” or “designated killers”. Such police are often unknown in the community where the killing occurs. They wear masks, are plain clothed and do not display a badge. The JCF’s *Book of Rules* requires police to wear badges, however, senior officers consistently defend the practice of allowing masked police to conduct operations in violation of their own standards.⁵²

Many families believe some police are paid to carry out killings. One mother whose son was killed by police said she was told by a community police officer that the police were paid a lot of money to kill him.

Since 2011, INDECOM investigations have revealed that officers from divisions with the highest number of fatalities are frequently involved in multiple fatal shootings. INDECOM found instances where one police officer accounted for 13% of killings in one division. Another officer accounted for 24% of killings being investigated in another division by INDECOM.⁵³

INDECOM estimates that 300 to 400 police officers are responsible for the majority of fatal shootings. Between 2010 and 2015, 1,182 people were killed by law enforcement officials. Of that total, INDECOM estimates that 41 officers were responsible for approximately 400 fatal police shootings. INDECOM is aware that the remaining 782 fatal shootings were not as a result of a further 782 individual officers each killing one victim, but instead

⁴⁷ Commissioner of the Independent Commission of Investigations v The Commissioner of the Jamaican Constabulary Force, Supreme Court of Jamaica, JMSC Civ 20 (2016) (Para: 2) (Hereinafter: INDECOM v JCF, 2016)

⁴⁸ INDECOM v JCF, 2016 (Para: 115)

⁴⁹ INDECOM v JCF, 2016 (Para: 4)

⁵⁰ Jamaica Gleaner, ‘INDECOM Boss Confirms Owen Ellington Being Investigated In Death Squad Probe’, 4 February 2015, Available at: <http://jamaica-gleaner.com/power/58148>

⁵¹ Nationwide Radio, ‘“Death Squad” probe deepens’, 26 October 2014, Available at: <http://nationwideradiojm.com/death-squad-probe-deepens/>

⁵² Jamaica Gleaner, ‘Unmask cops - JCF face more criticisms over decision to allow some police to wear masks on operations’, 14 August 2016, Available at: <http://jamaica-gleaner.com/article/lead-stories/20160814/unmask-cops-jcf-face-more-criticisms-over-decision-allow-some-police>

⁵³ INDECOM, Quarterly Report to Parliament, ‘Demanding Accountability’, 2012, p. 2 (Executive Summary)

that police officers were involved in multiple fatalities. For example, in one case a single police officer has been implicated in 22 separate police shootings.⁵⁴

While the Clarendon cases have yet to come to trial, the information uncovered, which is consistent with statements made to Amnesty International, points to a strong likelihood of the existence of individual police officers or even units tasked with carrying out extrajudicial executions on the orders of some governmental authorities or with its complicity or acquiescence. At the very least, it points to a complete failure of internal accountability within the JCF to review the conduct of its officers and prevent the deployment of officers and also a failure of the judiciary.

SHANIEL COOMBS, 23 2014

Shaniel Coombs was killed, allegedly by police officers, in Rennock Lodge, East Kingston, on 10 May 2014. According to his family, Shaniel had gone to the river with his best friend to bathe in the stream when police arrived wearing masks, jeans and t-shirts. According to Shaniel's aunt, a witness observed the two men speaking with the police when they were shot. She says Shaniel's hands were in the air. Allegedly the men were forced to their knees, one of the police took a phone call, after which the men were shot.

Immediately following the shooting, members of the community began to protest. They burned tires and created a roadblock to try and prevent the police from leaving the site of the shooting⁵⁵.

According to Shaniel's aunt the community had a good relationship with the local police, but she says the police who killed Shaniel came from outside the community. When community police arrived on the scene they entered the crime scene and reportedly came back with tears in their eyes. They told Shaniel's family that the two young men had been killed and left. According to a verbal summary given to the family by a pathologist, Shaniel was shot seven times in the back at close range.

The police account is that the two men were shot and killed in a gun battle and a 9mm pistol and three rounds of ammunition were seized. INDECOM opened an investigation. However, at time of writing no one had been prosecuted for the killings and Shaniel's family has not received any reparation.

⁵⁴ INDECOM, Email, 2 November 2016

⁵⁵ Jamaica Gleaner, 'Identity Of Men Killed In East Kingston Released', 11 May 2014, Available at: <http://jamaica-gleaner.com/power/52813>

MISTAKEN IDENTITIES

In several cases documented by Amnesty International, families believe the police were looking for another person suspected of criminal activity when their relative was killed.

NAKIEA JACKSON, COOKSHOP OPERATOR, 29 2014



↑  Nakiea Jackson's mother holds his memorial service programme in his bedroom. © Amnesty International, 2016

On 20 January 2014, Nakiea Jackson, a cookshop operator with dreadlocks, prepared lunchtime deliveries for the National Blood Bank and took out the garbage in an apron; minutes later he was shot.

According to witnesses, at approximately 12 noon several police officers – some uniformed, some plain-clothed – arrived at Orange Street, Downtown Kingston, looking for a man with dreadlocks. They went to the cookshop and asked Nakiea to open the door. Nakiea opened the grill, and one police officer entered with a gun in his hand. Two explosions followed. Nakiea was later dragged unresponsive out of the shop and thrown into a police vehicle, according to witnesses. Two witnesses stated that following Nakiea's shooting a police officer went to a police vehicle, took out a black plastic bag and entered the cookshop. They stated that the police officer was not carrying the bag when he came back out.

The police account is that a robbery had occurred in the area and they were pursuing a "Rastafarian looking" man and took evasive action and fired at Nakiea when he pointed a gun at them. Police say a 9mm pistol was recovered.

Immediately following the shooting, Nakiea's sister padlocked the shop to preserve the scene. INDECOM arrived shortly after. Its Forensic Team processed the scene and the body. Officers were served notices to provide statements and all the weapons were seized for testing. Statements were collected from witnesses and measures were taken to prevent officers from leaving the island. One police officer was charged.

In July 2016, a preliminary enquiry into the case was dismissed after a witness failed to appear in court. The witness had told the family that they were fearful of attending court. Nakiea's family stated that police raids of the Orange Villa community coincided with the court dates for the case but stopped after the case was dismissed⁵⁶.

⁵⁶ Henry, B. 'Quest for Justice', Jamaica Observer, 10 July 2016, Available at: http://www.jamaicaobserver.com/news/Quest-for-justice-Dismissal-of-case-of-police-killing-of-Orange-Villa-cook-shop-owner-irks-family_66685

**MATTHEW LEE, JUNIOR AUDITOR, SOUND ENGINEER, FORMER JUNIOR GOLF CHAMPION, 24
2013**



↑  *Matthew Lee next to a family portrait and his golf trophies. © Amnesty International, 2016*

Matthew Lee and two other men, Ratty and Garper, were killed by police at approximately 12 noon on 12 January 2013 in the affluent Arcadia community at the intersection of Evans Avenue and Arcadia. The three were returning from Constant Spring Police Station, where Matthew had driven Garper to report as a condition of his bail. Matthew was from a well-to-do neighbourhood, but his long-time friend, known as Ratty, lived in Grants Penn, a lower income neighbourhood. Matthew had played golf for Jamaica and Ratty was his caddy and friend.

Following Matthew's death, several eyewitnesses made anonymous calls to Jamaicans for Justice. According to these witnesses, Matthew had attempted to hand over documents to the police, who allegedly wore masks, and shots were heard shortly after. According to the autopsy reports seen by Amnesty International, Matthew received five gunshot wounds.

Allegedly the police picked up the bodies of the three men and placed them in the pick-up van and placed a revolver in Matthew's car. But witnesses have not come forward to INDECOM to make formal statements of these allegations.

Following the autopsy on Matthew's body, the police informed his family that his body could not be released to them for burial as they needed to conduct further investigations.⁵⁷ An independent expert pathologist reviewed two autopsy reports provided by Matthew's family for Amnesty International. The pathologist stated: "There are injuries to the body on the right forehead and cheek and left back described in both reports. The body diagrams show additional injuries with 'welts' to the left front chest and bruises to the outside of the right upper arm and right knuckles. This pattern of injuries is strongly suggestive of involvement in a struggle rather than a shoot-out with collapse to the ground."

The police account, as published in the media, states there was a shoot-out and they recovered a submachine gun and a pistol from the men. Photos of the car taken when it was returned to his family show no evidence of bullet marks.

INDECOM opened an investigation into this case. Matthew's family appeared on national television in 2013 and appealed to the public to come forward with information.⁵⁸ At the time of writing no witnesses had come forward to make formal statements and no prosecutions had been initiated.

⁵⁷ The Daily Observer, "Cops release body of Arcadia shooting victim," 25 January 2013

⁵⁸ Youtube, "Matthew John Lee Jamaica," 20 April 2013, Available at: <https://www.youtube.com/watch?v=jL9zvua80TO>

PLANNED OPERATIONS

According to the JCF's own guidelines on planned operations, "the principle of upholding the 'right to life' should be central to all armed operations, hence proper planning is essential."⁵⁹ The JCFs guidelines state that use of firearms must be planned and controlled to minimize the need to resort to potentially lethal use of force (para. 111); that plans should be constantly reviewed according to intelligence updates (para. 112); and that all plans should be recorded (para. 113).⁶⁰

Between July 2013 and 31 December 2015, 36% of all fatal shootings (125) occurred during so-called "planned operations."⁶¹ According to INDECOM, typically planned operations involve police officers entering into a room without plans, intelligence or information about what is awaiting them, resulting in a disproportionately high number of killings by police and exposing police officers to high levels of risk.⁶² INDECOM found that in most cases, written plans are not produced but given verbally. More specifically, in a 15-month period between January 2015 and March 2016 the Mobile Reserve⁶³ were involved in 44% of killings by police arising from planned operations.⁶⁴

This points to major failings in supervision, control and accountability of the JCF. It also suggests an internal failure by the JCF to review shortcomings in the planning of operations in order to prevent loss of life in the future, as required by international standards, which can amount to arbitrary deprivation of life.

TAMPERING WITH THE CRIME SCENE

"We know the system, and we know how these police are corrupt"

Mother of a man killed by the police

Preserving a crime scene is one of the most important aspects of ensuring an impartial and thorough investigation. The Revised Minnesota Protocol on the Investigation of Potentially Unlawful Deaths (Revised Minnesota Protocol) sets out detailed guidelines on how this should be done.⁶⁵

For many years, Amnesty International and local NGOs have documented how the Jamaican police have prevented effective investigations into fatal shootings by altering crime scenes.⁶⁶ Witnesses and relatives interviewed by

⁵⁹ Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy, p.17 (Para: 106)

⁶⁰ Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy, p.18 (Para: 111-113)

⁶¹ INDECOM, The INDECOM Quarterly, Planned Police Operations, April-June 2016, Available at: <http://www.indecom.gov.jm/The%20INDECOM%20Quarterly%20-%20April-June%202016.pdf>

⁶² INDECOM, The INDECOM Quarterly, Planned Police Operations, April-June 2016, p. 5

⁶³ The Mobile Reserve is a specialist unit within the JCF which is often involved in planned policing operations

⁶⁴ INDECOM, The INDECOM Quarterly, Planned Police Operations, April-June 2016, p.7

⁶⁵ Human Rights Council, The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, June 2016 (Hereinafter: Minnesota Protocol)

⁶⁶ Amnesty International, *JAMAICA: Killings and violence by Police: How many more victims?*, (Index: AMR 38/007/2001)

Amnesty International described seeing police plant weapons on victims, a long-standing practice.⁶⁷ One woman told Amnesty International that her partner was killed in front of her and the police then placed a weapon in his hand. Another woman said that after her son was shot, a nurse told her that the officer involved in the shooting had inflicted an injury on himself in the hospital in an effort to make the shooting appear to be an act of self-defence.

INDECOM has called for police to be checked more regularly for illegal guns that they could plant on crime scenes.⁶⁸ Before the creation of INDECOM, crime scenes were rarely secured, forensic or ballistic analysis was limited and crime scenes were not photographed. INDECOM's presence has significantly improved overall processing of the crime scene, but INDECOM must still rely on the police, media or family members to report a police killing to them, which inevitably leaves a period during which police have complete control of the crime scene.

In cases documented by Amnesty International, police routinely "cleaned" or failed to secure the crime scene. In one case a mother told Amnesty International that her family found dozens of police, some masked, scrubbing the wall and the floor of her home after they had placed her son against a wall and shot him. After the death of **Mario Deane** (see below), police are alleged to have had inmates scrub the cell in which he was beaten.⁶⁹ Dozens of families and witnesses also report seeing police picking up spent shells.

⁶⁷ Amnesty International, *Jamaica: The killing of the Braeton Seven – A justice system on trial*, (Index: AMR 38/005/2003)

⁶⁸ Jamaica Gleaner, 'Search those cops', 20 January 2013

⁶⁹ According to INDECOM press release, 'INDECOM Charge three police officers in the death of Mario Dean' 24 September 2014. Police were charged by INDECOM for failing to preserve the conditions of the cell where Mario Deane had suffered injuries. A Corporal was also charged with intent to pervert the course of public justice, by causing the cell where Deane was beaten to be cleaned prior to arrival of JCF or INDECOM investigators.



↑  Sister of Nakiea Jackson. © Amnesty International, 2016

Nakiea Jackson's sister described how she preserved the scene of her brother's fatal shooting by police until INDECOM arrived:

“One of the things I immediately noticed was there was all the food, everything was just as if it were another business day. The spoon was in the rice pot as if he was sharing. Then I saw one foot of his slippers... I walked to the adjoining room... I saw water... dragging the blood marks. I saw the flour, I saw the motion where the batter was, where the chicken would be fried. Everything was laid out as if that was the last activity he was involved in... I wanted to preserve the crime scene. So I took the padlock and locked (the cook shop)... I drove to the hospital. I saw him there, he was losing vital signs.”

Sister of Nakiea Jackson, cookshop operator, killed by the police in 2014

LETTING VICTIMS “BLEED OUT”

On 21 May 2016, a video was posted on social media showing a member of the JCF throwing the lifeless body of a man allegedly killed by the police into the back of a service truck.⁷⁰ INDECOM issued a statement condemning the states agents' failure to respect the dead. Yet this practice of throwing victims in the back of a police vehicle is commonplace. In most cases documented for this report, the body was removed from the crime scene. One daughter described how she saw police kick her father's lifeless body to cram it into the back of a police vehicle.

⁷⁰ Loop, 'INDECOM slams JCF over failure to respect the dead,' 29 May 2016, Available at: <http://www.loopjamaica.com/content/indecom-slams-jcf-over-failure-respect-dead>

It has been well established by local NGOs that police remove victims from the crime scene and community alive and extrajudicially execute them once detained, often *en route* to the hospital. In a recent paper, the former Executive Director of Jamaicans for Justice said that over years the organization documented: “Persons flung in the trunks of cars with one wound in the leg and arriving in hospital dead with a bullet in the head and a hole in the trunk of the police car.”⁷¹ During the course of this study, many families and witnesses told Amnesty International that the victim was taken alive from the scene and “finished off” on the way to hospital.

International human rights standards require law enforcement officials to take immediate action to secure medical attention whenever required, and to ensure that relatives of the injured person are notified at the earliest possible moment.⁷² The JCF’s own policies require police to “ensure that medical aid is secured for any person requiring it at the earliest opportunity.”⁷³

Amnesty International recorded consistent statements describing how victims are often left at crime scenes for lengthy periods or “driven around” by police as a way to ensure the victim “bleeds out.” Some families described being unable to find the body for several hours before it “showed up” at the Kingston Public Hospital. One mother told Amnesty International that after learning her son had been shot by police close to her home, she went to the public hospital. His body did not appear at the hospital until the following day. She was told by witnesses that her son was alive when taken by the police. Another family told Amnesty International that “a whole ton a police” showed up at the hospital to block the entrance and prevent family members from entering and supervising the medical attention given to the victim.

STRAY BULLETS

International standards require that police operations be carried out with utmost care to prevent those not involved in the incident from being harmed. It is unacceptable for police to fire while pursuing criminal suspects if this puts others at risk. However, cases documented for this report indicate that during police operations, bystanders continue to be shot and killed.

ANEIKA HAYDEN, 17 2009

Aneika Hayden was 17 when she was fatally wounded during a joint police and military law enforcement operation on 28 February 2009. She was shot as she lay in her bed in her aunt’s house in Kingston. The Bureau for Special Investigations (BSI) agent who investigated the death stated: “there is no doubt in my mind that she may have been shot by a member of the security force” engaged in a shoot-out in the area close to her home. Officers had taken Aneika to the hospital where she died while undergoing surgery on 1 March 2009.

According to the BSI report, four bullet fragments were removed from Aneika’s body and the autopsy report indicated that the cause of death was massive blood loss caused by a single shot to the abdomen. The investigator stated in his report that he had not able to secure ballistic and forensic reports, but that the bullet fragments recovered were said to be from a rifle which was being used by the security forces.

The police and security forces account is that they were confronted by gunmen on Halls Delight Main Road, Kingston 6, and they returned fire and pursued the gun men. None of the members of the security forces was injured.

At the time of writing, seven years after her death, Aneika’s family had been informed that an inquest would not take place and that the family should take the case to trial. The DPP has not brought a prosecution. The family has no money for legal representation and has not received any civil remedy.

⁷¹ C. Gomes, Police Accountability in the Caribbean

⁷² See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, Article 5(c) and (d) and Code of Conduct for Law Enforcement Officials Adopted by General Assembly resolution 34/169 of 17 December 1979, Article 6

⁷³ Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy, p.3

DEATHS IN CUSTODY

Law enforcement officials have a positive obligation to protect prisoners from harm and not to “use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.”⁷⁴

Violence in Jamaican prisons and police lock-ups is endemic, the result of poor supervision and leadership by correctional officers and poor record keeping, coupled with overcrowding and poor infrastructure.⁷⁵ Since July 2013 there have been 28 deaths in custody, according to INDECOM.⁷⁶

MARIO DEANE, CONSTRUCTION WORKER, 31 2014

Mario Deane was detained on his way to work at around 7.30am on 3 August 2014 for possessing cannabis. He was taken to Barnett Street Police Station in Montego Bay. Instead of being fined and released as was standard at that time for this minor offence⁷⁷, Mario was detained. According to his family and their lawyer, he was unlawfully refused bail after an officer allegedly heard him say, “It’s for things like that that I don’t like police.” He was placed in a cell with two men, one of whom was known to have mental health problems and the other was believed to be mute.

His mother received a call around 3pm advising her that Mario was in hospital. When she arrived he was alive, but almost unrecognizable. He was on life support, unconscious, and guarded by two police officers. Mario did not regain consciousness and died on 6 August as a result of the severe beating suffered.

Mario’s mother was first told by police that he “fell from a bunk.” The police later said that Mario was beaten while in his cell. His cell mates have limited capacity to refute the police version.

Following Mario’s death, his mother and community members held a protest. On 26 September 2014, INDECOM announced it would charge three officers with manslaughter, attempting to pervert the course of justice and misconduct in public office. In October 2016, Mario’s mother was informed that one of the officers charged had left the island and that the court case was expected to resume in 2017.

STANDARDS ON USE OF FORCE

“The Force doesn’t lack regulations, the issue is prompt implementation of those rules.”

Board member of the Police Civilian Oversight Authority

The right not to be arbitrary deprived of life is a fundamental and universally recognized human right, without exceptions. The right is recognized in the 1948 Universal Declaration of Human Rights. Although the Universal Declaration does not have the formal force of a treaty, and is therefore not legally binding in and of itself, it has become so widely recognized and accepted since its adoption that it should be regarded as obligatory for all states. Likewise, the 1966 International Covenant on Civil and Political Rights and the American Convention on

⁷⁴ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, Principle 15

⁷⁵ See interviews with Police Civilian Oversight Authority, INDECOM, and NGO Stand Up Jamaica.

⁷⁶ INDECOM, Email, 3 November

⁷⁷ Since this case in 2015 personal consumption of ganja was decriminalized, in part due to advocacy arising from this case.

Human Rights enshrine the right to life (Jamaica is a party to both instruments). States and state agents have an obligation not to act in a way that takes life and to protect and fulfil the right to life. Furthermore, they have a duty to investigate potentially unlawful deprivation of the right to life, to ensure accountability and to remedy violations.⁷⁸

The Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy states: “In carrying out our duties, members of the JCF shall, as far as possible, apply non-violent means before resorting to the use of force.”⁷⁹ The policy incorporates some principles set out in the UN Code of Conduct for Law Enforcement Officials,⁸⁰ and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which together reflect international human rights standards on the use of force and firearms.⁸¹

On paper, the JCF Use of Force Policy mostly reflects international good practice. In practice, however, it is consistently disobeyed.⁸² Operations are executed in a way that does not minimize the risk of loss of life of either state agents or citizens. Record-keeping of the issue and receipt of firearms and ammunition is weak, potentially life-saving first-aid is rarely provided after a shooting and written plans are rarely produced.⁸³

INDECOM received 896 complaints from the public in 2015 alone.⁸⁴ The most common complaints are of assault, discharge of weapon, shooting injuries and fatalities. More people shot by the police die than survive. In 2015, 101 people were killed by law enforcement officials, compared with approximately 60 non-fatal shooting injuries. In other words, three out of every five people shot by police are killed.⁸⁵ While the JCF policy states that a range of less lethal weapons are available for use,⁸⁶ based on evidence collected for this report, police rarely rely on a range of weapons and ammunition that would allow for a differentiated use of force depending on the situation and thus minimize loss of life.

In fact, excessive use of force is so widespread that in July 2016 the Attorney General publicly expressed concern regarding the high costs of claims against the government for police misconduct. According to reports in the press, 46% of settlements and judgment debts referred to the Ministry of Justice for 2015-2016 were for police misconduct, resulting in claims for false imprisonment, malicious prosecution, assault and battery and claims for constitutional redress.⁸⁷

⁷⁸ United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991) (Minnesota Protocol), p.7

⁷⁹ Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy, p.1

⁸⁰ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979

⁸¹ Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy, p.1

⁸² INDECOM, Command Responsibility, p.25

⁸³ INDECOM, Command Responsibility, p. 25

⁸⁴ Compiled from INDECOM Quarter reports for 2015

⁸⁵ Interview with INDECOM, 19 January 2016

⁸⁶ Jamaica Constabulary Force Human Rights and Police Use of Force and Firearms Policy, p.8

⁸⁷ Jamaica Observer, “Malahoo Forte says cost of judgments against Gov’t ‘worrying’”, 11 July 2016, Available at: http://www.jamaicaobserver.com/latestnews/Malahoo-Forte-says-cost-of-judgments-against-Gov-t--worrying-?_sm_byp=iVfWLq5066LjDcQ

4. “ISN'T IT A HUMAN RIGHTS VIOLATION TO SEE THE POLICE KILL YOUR SON?”

MENTAL SUFFERING

Relatives of those unlawfully killed by police often suffer long-term psychological consequences. Several people who spoke to Amnesty International were eyewitnesses to the ill-treatment or execution by police of their family members.

The wife and daughter of one victim described how they saw their husband/father shot by masked police and spent two nights sleeping in a house covered in blood waiting for the BSI to visit the crime scene. The women moved away from their community following the shooting because of police harassment and both remain severely traumatized by their experiences.

The mother of **Sheldon Davis** whose son was killed during the state of emergency in 2010, saw her son removed from her home and spent four days walking from police station to police station trying to find him before being told he had been killed by police.

Mario Deane's mother, whose son died after a severe beating in a police lock-up, could barely recognize her son's swollen and disfigured face when she was initially told by police that he had “fallen off his bunk.”

Nakiea Jackson's brother witnessed police drag Nakiea's limp body by its feet to a police vehicle, throw it in the back, and drive off.

In other cases family members were witnesses to direct threats by police officers to their relatives, who were later killed by police.

Many families report older members of the family becoming ill or depressed following a killing by police and attribute this to the impact of the death and the fact that justice is denied them.

“The minute my brother died, it cost us three times as much because it was a police killing... the police had law to protect him. In other circumstances it would have been ok to use a government pathologist but we had to get our own, fly in our own witnesses, the implications are greater than having someone just pass on, the mental anguish, emotional vulnerability, I feel like I have become fragile. I have had to re-programme my mind.”

Sister of Nakiea Jackson

IMPACT ON CHILDREN AND FAMILY LIFE

Amnesty International interviewed several people who were children or teenagers when their relative was killed by the police. The impact of killings by police on child relatives is particularly acute.

One daughter who witnessed her father being killed by the police never received counselling and had to drop out of school as with the loss of the family breadwinner her mother could no longer afford to pay her tuition and exam fees.

Women are often left to care for the victim's children. In one case, the children of a single father have been left largely to fend for themselves since he was killed as the family lacks the resources to care for them.

Relatives told Amnesty International that when they could, they took the victim's children or young brothers and sisters for counselling following the death.

“They were small when he [their brother] died. They used to cry at school, and cry out in class. The teacher had to keep calling me... I had to take them for counselling.”

Mother of man killed by the police

For children the impact of the death is felt very intensely. One teenage girl whose brother was killed by the police said:

“There is no way you can be a policeman and you are fighting for people's rights and life but you are also killing... When my brother died, my mother struggled to pay to bury him... And yet still you want us to let it go. No! You have to get rights, and they need to stop this, this is not right.”

Aneika Hayden's sister described how her sister's death impacted her teenage years:

“I was 16 at the time. At 16 I wanted things. I had my hopes up. When I heard the news she passed on, I don't know what happened, not only were her dreams shattered but mine were also. She was my only friend. The only person I could communicate with and tell everything. I lost a lot of weight... My grades went down. It went from A and B, to C, D, F. I couldn't focus on anything else. I couldn't sleep. I was afraid.”

HARASSMENT AND INTIMIDATION OF RELATIVES

There are many structural factors that drive and maintain impunity for killings by police in Jamaica, but among the most severe and pervasive is fear.

Many of the families that spoke to Amnesty International, particularly those from poorer socio-economic sectors with fewer resources for protection, requested that their identity be withheld because they were very fearful of reprisals from police. Many had experienced intense intimidation and harassment from police. Many women reported that the officers allegedly responsible for the killing were still on active duty in their neighbourhood; in some cases family members still regularly encounter the officer implicated in the killing of their relative.

Research for this report shows that in Jamaica intentional police intimidation and harassment of witnesses and the relatives of victims of police shootings are the rule not the exception and can persist for years, affecting many areas of life.

SPHERES OF HARASSMENT AND INTIMIDATION

AT HOME

"AFTER HE DIED, THEY CAME TO MY HOUSE, WHERE I LIVE WITH MY FAMILY. POLICE ASKED ME TO OPEN UP THE GRILL. I DIDN'T, I CALLED INDECOM... THEY STAYED FOR ABOUT THREE HOURS. THEY WERE THERE TO KILL ME, NOT TO INTIMIDATE ME."

• Witness and relative of man killed by police

IN POLICE CUSTODY

"I WAS CRYING. ONE OF THEM (A MALE POLICE OFFICER) SAID TO ME, 'WE SHOULD HAVE KILLED THE ENTIRE FAMILY.'"

• Relative of a man killed by the police

AT THE HOSPITAL

"BY THE TIME HE WENT UP ON THE WARD, THERE WERE THREE POLICE OFFICERS GUARDING HIM. I REALIZED IF WE WERE TALKING THEY WOULD FOLLOW US. EVERY TIME WE CONGREGATED TO TALK, THEY WERE FOLLOWING. ON WEDNESDAY, THE DAY HE WAS DYING... I NEEDED TO FIND A QUIET PLACE TO TALK ON THE PHONE. I FELT SOMEONE COME BEHIND ME, THERE WAS A POLICE OFFICER BEHIND ME. HE HAD FOLLOWED ME... I WENT BACK UP TO TELL MY SISTER WHAT HAD HAPPENED, AND BEFORE I COULD FINISH TELLING HER WHAT HAPPENED HE CAME BACK."

• Mother of Mario Deane

AT FUNERALS AND WAKES

"WE HAD THE BODY AT HOME AND WE WERE MOURNING. AND THE POLICE CAME, A LOT OF THEM, TAKING UP THE COFFIN...DRAWING IT OUT... I HAD TO CALL THE MINISTER TO ASK HIM TO ALLOW US TO GRIEVE IN PEACE. I THINK THE MINISTER CALLED THEM AND THEN THEY LEFT. BUT THEY HAVE BEEN HARASSING OUR FAMILY BITTERLY."

• Aunt of Shaniel Coombs

IN COURT

"THE FIRST DAY THE COURT WAS FILLED WITH POLICE OFFICERS... THEY CAME TO SEE WHO THE WITNESSES WERE... TO INTIMIDATE. THE JUDGE TOLD THEM TO LEAVE THE COURT HOUSE. MANY TIMES POLICE OFFICERS JUST SHOW UP TO INTIMIDATE."

• Brother of Nakiea Jackson

PSYCHOLOGICAL

"MY FEAR IS THAT MY BROTHER COULD BE HURT AS RETALIATION. YOU HEAR OF WITNESSES DISAPPEARING... I AM WORRIED THAT I AM GOING TO GET A CALL THAT SOMETHING HAPPENED TO MY BROTHER, MY SISTER, TO MY MOTHER."

• Sister of man killed by the police

SPHERES OF HARASSMENT AND INTIMIDATION

The relatives interviewed by Amnesty International described many forms of harassment and intimidation from psychological harassment to arrest and unlawful detention to attacks and alleged unlawful killings.

Families said male relatives of the victim had been unlawfully detained and beaten in detention. In several cases relatives alleged that police officers had killed witnesses in suspected cases of extrajudicial execution. Others told of women relatives who had left the island to escape intense police intimidation and harassment, others had moved out of their communities. Families with fewer resources had little option but to remain in their communities and were living in extreme fear of reprisals. Police intimidation and harassment is so pervasive that even INDECOM investigators have reportedly received threats.⁸⁸

Providing protection in small-island contexts is a challenge. The existing witness protection programme requires witnesses to give up many aspects of their ordinary lives and many are unable to put their life on hold for years awaiting a trial. Various sources told Amnesty International that witness protection services do their best but that regional co-operation, where one island accepts witnesses from another, might be a better model for Jamaica and the region.

Guaranteeing the protection of witnesses and victims and their families is critical for ensuring proper investigations and prosecutions in cases of alleged extrajudicial executions and unlawful killings. The failure to provide credible and effective protection has facilitated a climate of fear which can be exploited by officers seeking to evade justice. For example, eyewitnesses called Jamaicans for Justice following the killing of **Mathew Lee** to report what they had seen, but the case is currently stalled as no witnesses are willing to formally provide statements to INDECOM. Without eyewitness statements, mounting a strong prosecution is difficult.

Senior police representatives flatly denied receiving any reports of intimidation and harassment by police of relatives of the victims of killings by police.⁸⁹

THE RIGHT TO FREEDOM FROM TORTURE AND OTHER ILL-TREATMENT & THE RIGHT TO FAMILY LIFE

Relatives of victims of human rights violations may become victims of violations under the American Convention in their own right as a result of the anguish and suffering they endure due to the abuses committed against their loved ones and the subsequent conduct of the state in response to the initial violations.⁹⁰

The mental suffering inflicted on the relatives of those unlawfully killed by the police and intense and pervasive police harassment of relatives may constitute a violation of the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment) in some of the cases documented for this report.

Torture and other cruel, inhuman or degrading treatment or punishment are absolutely prohibited under international law.⁹¹ The fundamental rights to physical and mental integrity, to be free from cruel and inhumane or

⁸⁸ Jamaica Gleaner, 'Who wants INDECOM officers dead? - Investigative body suspects cops after its members are threatened', 2 August 2015, Available at: <http://jamaica-gleaner.com/article/lead-stories/20150802/who-wants-indecom-officers-dead-investigative-body-suspects-cops-after> Also see: Nation Wide Radio Jamaica, 'INDECOM Death Threats', 6 August 2015, Available at: <http://nationwideradiojm.com/indecom-death-threats/>

⁸⁹ Interview, Police Federation, 15 July 2016

⁹⁰ Inter-American Court of Human Rights, case of the Barrios Family v. Venezuela, judgment of November 24, 2011 (merits, reparations and costs), para.301

⁹¹ International Court of Justice, Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal), Judgment of 20 July 2012, para.99 ("In the Court's opinion, the prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*). That prohibition is grounded in a widespread international practice and on the *opinio juris* of States"). See also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles 2 and 4.

degrading treatment and to personal liberty and security are also protected by the American Convention on Human Rights.⁹² Jamaica's own Charter of Fundamental Rights and Freedoms (Constitutional Amendment Act, 2011) in Subsection 2 (h) recognizes the "right to equitable and humane treatment by any public authority in the exercise of any function."

The Inter-American Court of Human Rights has held that the mere threat of a conduct prohibited by Article 5 of the American Convention, when sufficiently real and imminent, may be in conflict with the right to personal integrity. Creating a threatening situation or threatening to kill someone may also constitute, in some circumstances, inhuman treatment.⁹³

International law calls on states to take steps to protect families from further human rights violations after the killing by a state official of their loved one. The Revised Minnesota Protocol states: "Family members should be protected from any ill-treatment, intimidation, or sanction as a result of their participation in an investigation or their search for information concerning a deceased or disappeared person. Appropriate measures should be taken to ensure their safety, physical and psychological well-being, and privacy."⁹⁴

Likewise, under international law everyone has the right not to be subjected to arbitrary or unlawful interference with their privacy, family or home.⁹⁵ The Inter-American Court of Human Rights has also established that "the protection of privacy, family life, and the home entails the recognition that there is a personal sphere that must be exempt and immune from abusive and arbitrary invasion or interference by third parties or the public authorities."⁹⁶

Jamaica's Charter of Fundamental Rights and Freedoms also recognizes the right of everyone to: "respect for and protection of private and family life, and privacy of the home."⁹⁷

However, in several of the cases documented here, far from upholding these rights, the state has added further injury to the loss of a loved one by further violating the right to private and family life.

⁹² American Convention on Human Rights (22 Nov. 1969), OAS Treaty Series No. 36; 1144 UNTS 123; 9 ILM 99 (1969), Article 5(1), to which Jamaica is party.

⁹³ Inter-American Court of Human Rights, case of the Barrios Family v. Venezuela, judgment of November 24, 2011 (merits, reparations and costs), para.82. See also: *Summary of Barrios family v Venezuela*, Loy. L.A. Intl'

⁹⁴ Revised Minnesota Protocol, p.15 (para: 42)

⁹⁵ International Covenant on Civil and Political Rights (adopted 16 Dec. 1966, entered into force 23 March 1976), 999 UNTS 171, Article 17

⁹⁶ Inter-American Court of Human Rights, case of the Barrios Family v. Venezuela, judgment of November 24, 2011 (merits, reparations and costs), para.140

⁹⁷ Charter of Fundamental Rights and Freedoms (Constitutional Amendment Act) 2011, p.4, Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=95194&p_country=JAM&p_classification=01.01

5. WAITING IN VAIN

THE SLOW CRIMINAL JUSTICE SYSTEM

“The law is not for poor people like we.”

Woman in marginalized Kingston community

Severe delays in the criminal justice system were universally recognized by those interviewed for this report as a major structural barrier to reducing crime in Jamaica. One senior police officer told Amnesty International: “a criminal charged in 2015 will not get to court until 2020.” Another said: “patience with the slow justice system has run out.”⁹⁸

Since his appointment in March 2016, the Minister of Justice has identified reducing backlogs and delays in the court system as a priority. In a sectoral presentation to Parliament in June 2016, the Minister stated he would continue programmes aimed at justice reform by removing and repealing out-dated legislation, reducing the backlog in the courts, modernizing and expanding the courts and protecting vulnerable groups.⁹⁹

Other practical measures proposed by the Ministry include: allowing willing judges to sit beyond retirement age, introducing alternative methods of dispute resolution, increasing the number of courtrooms, extending court hours into evening sittings, using Case Progression Officers to monitor cases and ensure their trial readiness, using technology such as video-link for introducing evidence and digitization of court processes.

Jamaica has received significant funding and technical support to implement justice sector reforms from donor partners, including the Canadian and United Kingdom governments, and the European Union (EU). For example, the EU, beginning in 2017, will grant US\$23 million for the justice system.¹⁰⁰

Despite these administrative changes, several senior government officials told Amnesty International that without more courtrooms and judges, the backlogs simply will not be addressed.

⁹⁸ Interview, Police Federation, 15 July 2016. See also, Jamaica Observer, ‘Frustrated! Cops say court backlog leaves anti-gang cases languishing’, 20 April 2016, Available at: http://www.jamaicaobserver.com/news/Frustrated_58257

⁹⁹ Ministry of Justice, ‘Sectoral presentation to Parliament,’ 15 June 2016, p.3

¹⁰⁰ Interview with European Union, 12 July 2016. See also, National Indicative Programme Jamaica 2014-2020 2 September, 2014, Available at: http://ec.europa.eu/europeaid/national-indicative-programme-jamaica-2014-2020_en

DENYING WOMEN AND FAMILIES ACCESS TO JUSTICE

“Even if you do follow up with the case, sometimes you don’t have the bus fare, you don’t even have the money to go [to court]. You give up hope. Because you are fighting a giant. You are thinking, how can you win. It’s the government. You are a poor man fighting the government. There is no way you can win that case.”

Sister of Aneika Hayden killed during a law enforcement operation in 2009

There are several key actors in the criminal justice system that play a critical role in facilitating access to justice. The DPP determines whether or not to prosecute a case. A Special Coroner’s Court conducts inquests into killings by police, to establish the cause of death and whether a killing was lawful or not. The Court’s decision is then referred back to the DPP who decides whether to prosecute or close the case. Since 2013, INDECOM has also been able to initiate prosecutions of police officers.

As of July 2016, INDECOM had charged almost 100 officers with various offences, but only eight cases had been tried.¹⁰¹ INDECOM secured its first and to date only murder conviction in April 2016, in a case prosecuted by the DPP, in which a police officer was found guilty of the murder of his former girlfriend.¹⁰²

According to the Assistant Commissioner of INDECOM: “It’s very hard to get a case to trial. Justice is being denied, either way you look at it. Almost a hundred officers have not had a trial, so they are on no pay, or limited pay, suspended and don’t carry firearms. Also, years pass and witnesses die and leave.” The very first case in which INDECOM charged a police officer with murder has yet to be brought to trial, six years after the killing.

TYRONE JOHNSON, CONSTRUCTION WORKER, 21 2003

Tyrone Johnson was killed, allegedly by police, on 21 July 2003. His father was allegedly killed by gunmen in 1998. Tyrone’s mother has been waiting for 13 years for an inquest to begin into her son’s case¹⁰³. Since the closure of Jamaicans for Justice’s legal department in 2014-2015, the family has had no legal representation.

This case was investigated by BSI, a unit within the police force that conducted investigations into police killings prior to the establishment of INDECOM. According to one witness statement provided to the BSI, Tyrone was running from gunmen. After the gunfire ceased, according to three other eyewitnesses, he was taken into police custody. According to another witness, police got Tyrone out of the police car near a bus stop and shot him.

The police account stated that Tyrone was with a group of gunmen who opened fire. They stated that they responded to the shooting and found Tyrone suffering from gunshot wounds.

Tyrone’s mother told Amnesty International her son had been detained and beaten in custody some weeks before his death.

In 2011, the case was sent to the Special Coroner’s Court. In September 2016, his mother was still attending court.

¹⁰¹ INDECOM, Email, 1 November 2016

¹⁰² INDECOM, Press Release, ‘INDECOM gets 1st murder conviction’, 13 April 2016

¹⁰³ D. McFadden, ‘In Caribbean, gridlocked courts stall lives,’ Associated Press, 26 April 2013, Available at: <https://lasentinel.net/in-caribbean-gridlocked-courts-stall-lives.html>

DELAYED INQUESTS

LETTER SENT BY TYRONE JOHNSON'S MOTHER TO THE SPECIAL CORONER'S COURT IN 2016

“Good morning your honor. I am the mother of Tyrone Johnson. I know that the time of justice takes a long time but this case has come to a stand-still. It has been 12 going 13 years since the police murdered my son and not one of them is coming to court. All of them have disappeared. Your honor, I am not here to tell you how to do your job because you studied hard to be in your chair, but my question to you is why is it that no warrant have been issued for the officers who are not showing up in court. Your honor I am getting tired of coming to court and not seeing the officers. If they did a good job, why are they hiding from the court. If there will be no trial let's just quit now and not waste the courts time and mine. Thanks for allowing me the time to voice my opinion, but 13 years of suffering and missing my son has taken a toll on me. Again thanks you for listening.” - Claudette Johnson

The purpose of the Special Coroner's Court is to establish the cause of death, not to determine individual criminal responsibility. The Special Coroner's Court is also not mandated to make policy recommendations to prevent future fatal shootings or to support police reform.

When the Special Coroner's Court was established in 2011 to deal with killings by police, this was seen as a victory for human rights activists. However, by 2013, the Court had a huge backlog of 300 cases.¹⁰⁴ For the past three years, the Special Coroner's Court has received an average annual budget of around US\$24,000, sufficient to cover the salaries of one judge and support staff and a tiny administration budget.¹⁰⁵

By 2016, despite the reduction in killings by police in 2014-2015, some 300-400 cases were before the court, which had sufficient resources to deal with only 30 cases a year.¹⁰⁶

Civil society has for years called for increased resources for the Special Coroner's Court.¹⁰⁷ In November 2015 in submissions to a Joint Parliamentary Select Committee, INDECOM expressed concern at the number of years it was taking for inquests to be completed and called for reform of the Court. It also recommended increasing the number of coroners and support staff.

In addition to the delays, in practice, many senior officials who spoke to Amnesty International, believe the DPP diverts cases to the Special Coroner's Court rather than pursuing cases with prima facie evidence, as a way to manage the volume of cases reaching the DPP's office. According to a news source, the Special Coroner reported in 2016 that the number of cases being referred to the Special Coroner's Court had doubled.¹⁰⁸ This adds an additional step in the process – and often years of further delays – for families seeking justice. In addition, Jamaicans for Justice is aware of at least two cases where even after a finding by the Special Coroner of unlawful killing by the police, no criminal charges were laid by the DPP.

¹⁰⁴ The Gleaner, Letter to the editor from Dr. Carolyn Gomes, Director of Jamaicans for Justice, 9 March 2013, Available at: <http://jamaica-gleaner.com/gleaner/20130309/letters/letters4.html>

¹⁰⁵ See 2014-2015 Jamaica Budget, Available at: <http://www.mof.gov.jm/documents/documents-publications/document-centre/file/367-estimates-of-expenditure-2014-2015.html>; 2015-2016 Jamaica Budget, Available at: <http://www.mof.gov.jm/documents/documents-publications/document-centre/file/928-estimates-of-expenditure-2015-2016.html>; and 2016-2017 Jamaica Budget, Available at <http://www.mof.gov.jm/documents/documents-publications/document-centre/category/189-2016-2017.html>

¹⁰⁶ Jamaica Observer, “Case overload choking Coroner's Court,” 10 May 2016, Available at: http://www.jamaicaobserver.com/news/Case-overload-choking-Coroner-s-Court_60418

¹⁰⁷ The Gleaner, Letter to the editor from Dr. Carolyn Gomes, Director of Jamaicans for Justice, 9 March 2013, Available at: <http://jamaica-gleaner.com/gleaner/20130309/letters/letters4.html>

¹⁰⁸ Jamaica Observer, “Case overload choking Coroner's Court,” 10 May 2016, Available at: http://www.jamaicaobserver.com/news/Case-overload-choking-Coroner-s-Court_60418

FAILURES AND DELAYS IN PROSECUTING

“The DPP reports to no one, that is part of the problem”.

Senior official

Nearly all those interviewed by Amnesty International expressed frustration at the DPP’s reluctance to prosecute in police killing cases and long delays when determinations to prosecute were made.

According to a 2008 report by the George Washington University Law School and Jamaicans for Justice, entitled *Killing Impunity*, less than 10% of all cases of killings by police since 1999 had reached the criminal courts.¹⁰⁹ And between 1999 and 2008 there had been only one conviction for murder by a police officer.¹¹⁰

Under the Access to Information Act, Amnesty International requested information from the DPP related to the number of police officers criminally charged and convicted between 2006 and 2016 and the average time taken to determine whether to press charges against officers. At the time of writing, Amnesty International had not received the information requested from the DPP, and the DPP had exceeded the stipulated time limit for providing a response set out in the Act.

Many sources stated that the DPP applies the protocol for prosecuting police cases in a discriminatory way that shows inherent bias towards the police and has a tendency to make determinations on cases rather than bringing them to trial to allow a jury to decide. Lawyers and other experts interviewed by Amnesty International stated that the DPP often finds indirect ways not to prosecute.

When asked why the number of prosecutions brought against police by the DPP was so low, the DPP expressed the view that international organizations like Amnesty International overlook the cultural context in Jamaica. In her view, jurors often view police officers as offering protection and do not want to convict them. “When you put the witnesses in the box the material has to be exaggerated or jurors favour the police... You can know what will happen looking at a case,” she said.¹¹¹

In cases where the DPP has brought prosecutions, there is evidence to suggest that public pressure created by media coverage combined with advocacy led by family members has influenced the decision to prosecute. Families with fewer resources and personal contacts, and often deeply fearful of further police harassment and intimidation, are less likely to ensure a prosecution is brought on their cases.

Amnesty International was told that the DPP rarely provides families with reasons when a decision is taken not to prosecute which limits the families’ ability to provide information which could buttress the case and present credible evidence to the court.

Given the failure of the DPP to prosecute, INDECOM’s powers to investigate and prosecute have been welcomed by families and NGOs, but the DPP and INDECOM have clashed over this publicly and in court. While the Supreme Court in 2013 upheld INDECOM’s powers to initiate prosecutions, the DPP’s view is that investigation and prosecution should be kept separate.¹¹²

Jamaica has committed to international human rights standards which require that a prima facie case of unlawful killing by police be investigated in the criminal courts and that those suspected of criminal responsibility be held

¹⁰⁹ George Washington University Law School/JFJ, *Killing Impunity* p. 6

¹¹⁰ George Washington University Law School/JFJ, *Killing Impunity*, p. 6

¹¹¹ Interview with the Director of Public Prosecutions, 15 April 2016

¹¹² Interview with the Director of Public Prosecutions, 15 April 2016

to account. The failure of the DPP, which is independent of the judiciary and executive, to prosecute in police killing cases is a major barrier to justice and represents a failure by the Jamaican state to provide access to justice, to prevent similar violations in the future and to provide effective remedy and full reparations for victims. As indicated by the Inter-American Commission on Human Rights in the case of Michael Gayle in October 2005, the state cannot hide behind the excuse that it failed to prosecute because the DPP is independent and exercised discretion:

“With regard to the exercise of the DPP’s discretion in particular, the State has argued that under the Constitution of Jamaica, the DPP has exclusive authority in Jamaica to institute, continue or terminate any criminal proceedings that the State cannot interfere with the DPP’s decision in this regard... however, the international obligations assumed by a state cannot be superseded by or made subject to domestic laws of that state. To the contrary, domestic legislation and procedures, including the decisions taken by bodies like the DPP, must accord with the State’s international human rights obligations and constitutional status of such bodies cannot be raised as defence against the State’s international responsibility for inadequacies in this regard. In cases such as the present involving violations of the right to life perpetrated by state agents, international standards require that those responsible to be prosecuted and punished, and the State must take the legislative or other measure necessary to fulfil this obligation.”

Amnesty International holds it is the absolute responsibility of the state to ensure that the mechanisms and procedures for bringing to justice those state agents suspected of responsibility for crimes under international law and human rights violations are meaningful, transparent and, above all, effective. Furthermore, under the Vienna Convention on the Law of Treaties, to which Jamaica is a party, “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.¹¹³

OTHER BARRIERS TO ACCESS TO JUSTICE

An essential criteria for a fair hearing is the principle of “equality of arms” between parties in a case, and the right to legal counsel.

Most of the families interviewed by Amnesty International had no legal representation. For many years Jamaicans for Justice accompanied several families of people killed by the police in the Special Coroner’s Court and during criminal trials. However, due to loss of funding, it was forced to close its legal department between 2014 and 2015.

Jamaica’s current legal aid regime does not cover legal aid for families at the Special Coroner’s Court. INDECOM has proposed to Parliament that it act as an interested party in inquests. However, even if this proposal is accepted, families whose cases pre-date INDECOM remain without accompaniment in court and are therefore denied the right to effectively participate in the investigation of their case.

In criminal trials, it is assumed that the DPP or INDECOM represents the family and so families have no right to legal aid.

In contrast, the Jamaica Police Federation provides legal representation for all officers facing criminal charges.¹¹⁴ In an Access to Information request, Amnesty International asked how much was spent in the past ten years in legal fees by the Police Federation to defend police criminally charged for killings. As outlined previously, at the time of writing, the Ministry of National Security had not provided the information.

Many families told Amnesty International that being unrepresented in court, combined with police intimidation, makes the court space itself both intimidating and re-victimizing.

¹¹³ Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 Jan. 1980), 1155 UNTS 331, 8 ILM 679, Article 27

¹¹⁴ Interview with Police Federation, 15 July 2016.

DENYING EFFECTIVE REMEDY AND REPARATIONS

The death of a male breadwinner can have severe and long-term economic implications for their families. With no support from the state and a weak social welfare system, Jamaican women are often left to take on major financial burdens after a relative is killed by police. Women told Amnesty International they were unable to pay rent or buy food following the death of their husband or son. In low-income families, burial costs and the costs for independent pathologists put a severe strain on family finances and people reported having sold personal possessions from cars to cows to try and retain lawyers.

Under Jamaican law, families can in principle initiate a civil claim immediately after the death of their relative. But unless the state admits responsibility -- which is extremely rare -- or is found responsible for an unlawful police killing, the civil claim cannot be pursued. The result is that most cases are stayed pending the outcome of the criminal case, which, as has been shown above, often takes years to come to trial.

In practice most families have no legal representation and are therefore unable to bring civil claims. This means families rarely receive civil compensation or effective remedy for the death of their relatives through unlawful police action. Furthermore, the current statute of limitations requires families to bring civil claims within a six-year period. It is very unusual, indeed unheard of, for criminal prosecutions to be completed within six years.

THE RIGHT TO ACCESS TO JUSTICE AND REPARATION

The American Convention on Human Rights (Article 8) states: "Every person has the right to a hearing, with due guarantees and within a *reasonable time*, by a competent, independent, and impartial tribunal, previously established by law". (emphasis added)

Victims of human rights violations have the right to judicial protection, and prompt recourse, including when the human rights violations may have been committed by persons acting in their official duties.¹¹⁵

The obligation to provide legal aid to those whose rights may have been violated by the state and who lack financial means derives from Article 8 of the Universal Declaration on Human Rights and Article 2 of the International Covenant on Civil and Political Rights which establish the right to an effective remedy by competent national tribunals for acts violating fundamental rights set out in international treaties, the Constitution or the law.¹¹⁶ The obligation to provide legal aid to persons involved in criminal or civil suits derives from Article 14 of the ICCPR.

The Revised Minnesota Protocol sets out that families should have access to information concerning the violations and accountability mechanism, and full reparation including restitution, compensation, rehabilitation, and guarantees of non-repetition. Families are entitled to government verification of the facts and public disclosure of the truth, as well as sanctions against persons responsible for the violations.¹¹⁷

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Victim's Declaration)¹¹⁸ states that: "States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support."

¹¹⁵ American Convention on Human Rights, Article 25

¹¹⁶ Special Rapporteur Gabriela Knaul, 2013 (Para: 36)

¹¹⁷ Minnesota Protocol, p. 7-8 (Para: 14)

¹¹⁸ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power A/RES/40/34, 29 November 1985. The Declaration defines a "victim" as persons who "individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

The Declaration calls on states to establish and strengthen judicial and administrative measure: “to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.” (Art.5) Victims should be provided with information about the proceedings (Art. 6(a)), should be allowed to present their views and concerns at appropriate stages during the proceedings (Art. 6(b)), and be provided with assistance to minimise inconvenience, protect their privacy and ensure their safety (Art. 6(d)). Victims have the right to restitution, and in case the crime has been committed by a person acting in official or quasiofficial capacity, the victim should receive restitution from the respective State (Art. 11).

Jamaica has a Victim’s Charter developed in 2006 which incorporates many universally accepted principles and the UN Victim’s Declaration. It is however, non-binding, and there is no clear indication of how the government plans to implement the policy. Further, it does not explicitly mention relatives of victims of police killings as victims.

6. POLICE OVERSIGHT

“INDECOM is a success story of the past 10 years... [that is] stepping on a lot of toes.”

Minister of Justice in interview with Amnesty International

Since the 1990s there have been a number of largely failed attempts to provide effective, independent oversight of the police. The Police Public Complaints Authority (PPCA), a governmental body, was established in 1992 to monitor and supervise investigations by the police into killings and other complaints against the police. The BSI was established in 1999 to investigate police shootings. However, human rights organizations documented many irregularities in the investigations by BSI and the PPCA¹¹⁹ and throughout the 1990s and 2000s killings by police continued to rise.

Today, there are several mechanisms designed to provide oversight and accountability of the JCF. The Police Civilian Oversight Authority (PCOA), which is responsible for routine monitoring of JCF's compliance with its own procedures and which carries out regular inspections of prisons and shares its findings and recommendations with police; the Police Services Commission which has responsibility for appointments, promotions and discipline; and INDECOM.

In 2010, the year INDECOM was established by an Act of Parliament, 307 people were killed by the police, including those killed during the state of emergency.¹²⁰ By 2015 there were 101 police killings, half the average of previous years. While the JCF attributes this reduction to its training in human rights and reduced use of lethal force,¹²¹ diverse actors interviewed by Amnesty International attribute this reduction in killings mainly to the work done by INDECOM.

AN OVERHAUL OF INVESTIGATIONS

Under international law, investigations into possible unlawful killings must be prompt, effective, thorough, independent and impartial. Any individual who has suffered harm as the direct result of an unlawful killing should be granted legal standing and investigating bodies should communicate with them in a timely manner during all phases of the investigation.¹²²

¹¹⁹ Amnesty International, *‘Let them kill each other’: Public security in Jamaica’s inner-cities*, (Index: AMR 38/001/2008) p.28

¹²⁰ The INDECOM Act repealed the Police Public Complaints Act and INDECOM took over from the PPCA in August 2010.

¹²¹ Jamaica Constabulary Force, Annual Report, 2015, p.12

¹²² Minnesota Protocol, p.14 (41)

“[N]o ammunition checks for police; no swabbing of hands of police or deceased; no fingerprinting of weapons; no testing of fluids; no writing of investigation notes; forget about photographs of incident scenes; and certainly no visits of forensic pathologists to scenes of crime”.

Description by the former Executive Director of Jamaicans for Justice of the standard of investigations documented by the organization after the death of Michael Gayle

Amnesty International’s research found that the quality of investigations into killings by police can be divided in two periods: before and after INDECOM.

Since INDECOM was set up there has been an overhaul of the way investigations are conducted. Various experts told Amnesty International that the quality of investigation by INDECOM is thorough and the reports usually include ballistic, pathology, forensic and gun-powder reports.

As of June 2016, INDECOM had 38 investigators, including eight forensic examiners who record, collect and assess evidence from the scene of the incident and produce exhibits. Since 2013, a court ruling allows INDECOM to access phone records¹²³ and three examiners are trained on gathering phone evidence. Since April 2016, in addition to the international ballistics expert who visits once a month, INDECOM has retained a second full-time international ballistics expert. In order to overcome the lack of independent expertise currently available in the country, INDECOM has secured access to an international network of experts willing to provide support in pathology, voice recognition and enhancement of video CCTV.

Despite significant advances in the quality of the investigation, INDECOM’s workload is overwhelming. As of 2016 it had over 1,000 open investigations. Limited resources force INDECOM to focus on the most serious crimes with the strongest evidence for prosecution. It is also conducting criminal investigations into a number of the alleged extrajudicial executions which occurred during the state of emergency in 2010.

The only commonly cited frustration families of victims expressed about INDECOM was its failure to update them regularly on the progress of investigations into their case. INDECOM readily acknowledges its capacity for frequent family liaison is limited because of the number of cases it is dealing with and limited staff.

In 2016, INDECOM released a Complaints and Grievance Policy Respecting External Complaints which allows for complaints by witnesses, members of the security forces, public bodies or others who have a direct stake in the investigation, increasing its accountability to the public.¹²⁴

ASSESSING PATTERNS AND TRENDS

In addition to conducting investigations into complaints against the police, INDECOM produces quarterly reports, and submits annual reports to Parliament. These often analyse trends, set out international and national law and best practice approaches and detail lessons learned to inform changes in police policies and procedures. On various occasions INDECOM has developed the lessons learned in collaboration with the JCF. Reports provide evidence of key operational problems and provide guidance for addressing these. Reports have covered such areas as engaging with people with mental health problems, de-escalation and restraint, among others.

Unfortunately, INDECOM’s recommendations are not often implemented and there is no clear mechanism in Parliament for ensuring its recommendations are reviewed and implemented. For example, in its 2012 report to Parliament, INDECOM made clear recommendations regarding the use of concealment gear and masks but these have yet to be implemented.

¹²³ See *Digicel Jamaica Limited v the Independent Commission of Investigations* [2013] JMSC Civ. 87 (2013)

¹²⁴ INDECOM, *Complaints and Grievance Policy Respecting External Complaints*, Available at: <http://www.indecom.gov.jm/EXTERNAL%20COMPLAINTS%20POLICY%20final.pdf>

CHALLENGES TO INDECOM'S POWERS

In August 2016, the Prime Minister publicly expressed support for INDECOM.¹²⁵ In interviews with Amnesty International, senior government officials, including senior police, acknowledged that INDECOM had been critical in bringing down the number of civilians killed by the police. INDECOM's budget has been progressively increased, largely with support from international donors.¹²⁶

Nevertheless, over the past six years, the independence and powers of INDECOM have been repeatedly challenged by different arms of the Jamaican state. In addition, the failing criminal justice system has curtailed INDECOM's ability to successfully prosecute.

In 2010 the Police Federation, and other police groups, challenged INDECOM's powers to arrest and charge someone for a criminal offence without a ruling from the DPP. The challenge followed INDECOM's first charge of a police officer for murder. In 2013, the Supreme Court upheld INDECOM's powers to arrest, charge, investigate and initiate prosecutions of members of the police force. The Court also held there was no requirement for a ruling of the DPP before INDECOM could arrest and charge officers.

In another case, after charging 13 officers in the Clarendon Division with murder in 2013, INDECOM requested access to the disciplinary records of officers allegedly involved the "death squad". INDECOM investigators were investigating allegations that those in command selected officers with poor disciplinary records for the specialist unit.¹²⁷ The Commissioner of Police denied INDECOM access to the records citing public interest immunity requiring INDECOM to pursue the case in court. In 2016, the Supreme Court ordered the JCF to disclose the records within 120 days.¹²⁸ At the time of writing, the disciplinary records had not been handed to INDECOM, and the organization understands the matter will return to court.

In 2016, INDECOM sought a search warrant to enter the JDF "(Jamaica Defence Force)" camp in order to recover exhibits linked to the use of mortars during the 2010 state of emergency in connection with its investigations into the deaths of two people. JDF resisted the application and sought a stay on warrant and the matter is now awaiting judgement from the Supreme Court. The Solicitor General has publicly urged the court to block INDECOM's access to the camp on national security grounds.¹²⁹

These are just a few examples of the many time-consuming and expensive cases in which INDECOM has had to litigate with police or other arms of the state to maintain or defend its statutory powers. All individuals have a right to a fair trial and the presumption of innocence in fair trial proceedings. However, this persistent challenging of INDECOM by senior police officers and other actors suggests a lack of support at the highest levels of the state for efforts to challenge impunity for extrajudicial executions.

A Joint Select Committee of Parliament met to review the INDECOM Act in 2015. A number of important clarifications around its powers are expected to be outlined in a revised Act. This important step would ensure that INDECOM has the powers in law to operate effectively.

¹²⁵ Jamaica Gleaner, 'INDECOMs role key to law and order, says Holness,' 28 July 2016, Available at: <http://jamaica-gleaner.com/article/news/20160817/indecoms-role-key-law-and-order-says-holness>

¹²⁶ According to publically available budgets, INDECOMs budget was over USD 334,000 in 2014-2015 and USD 350,000 in 2016-2017.

¹²⁷ INDECOM v JCF, 2016 (Para:115)

¹²⁸ INDECOM, 'Court says INDECOM entitled to the disciplinary records of police officers being investigated', Press Release, 23 February, 2016

¹²⁹ RJR News, Solicitor General urges court to block INDECOM warrant to search JDF headquarters', Available at: '<http://rjrnewsonline.com/local/solicitor-general-urges-court-to-block-indecom-warrant-to-search-jdf-headquarters>

LIMITATIONS TO THE INDECOM MODEL

Amnesty International's research into police oversight mechanisms in countries around the world has shown that no matter how good a mechanism, it alone cannot be a panacea for effective police accountability.¹³⁰ Other state mechanisms and systems, including other structures for police oversight and internal discipline, must work effectively to combat impunity.

The slow criminal justice system is a major bottleneck which facilitates impunity for killings by police. Since 2013, INDECOM has pursued its own prosecutions. As of October 2016, there were 100 cases awaiting trial based on INDECOM investigations, 60 of which involved murder charges, with some officers facing multiple murder charges. Many of those cases have been waiting before the courts for years. As INDECOM officials said to Amnesty International: "We are pushing and charging, but the queue has now moved to the court system."

INDECOM was not established with a mandate to retroactively address cases. In 2011 INDECOM took over BSI cases spanning 2009 and 2011, however hundreds of other pre-INDECOM cases remain poorly investigated and stuck in the long queue for the Special Coroner's Court.

While the 2010 INDECOM Act mandates the police to report all fatal shootings to the oversight mechanism, it is also likely that many criminal offences by the police that do not result in the death of the victim are simply not reported to INDECOM and therefore not investigated or documented. For example, the low number of reports of sexual assault made to INDECOM suggests significant under-reporting.

In a large number of cases, INDECOM finds insufficient evidence to recommend criminal prosecution, but the current model does not give it any role in the internal disciplinary process of the JCF. The Assistant Commissioner of INDECOM commented: "If we recommend no charge, it's often because we don't have the evidence... It's not because the officer is innocent but because we don't have the evidence, or the person who brought the case or victim doesn't want to give the statement... many things are unsubstantiated through intimidation." In such instances, INDECOM currently can only make recommendations to the JCF and Police Services Commission. INDECOM has no power to insist on disciplinary measures and it is not clear that the JCF consistently carries out disciplinary investigations in order to take the necessary corrective measures, such as disciplinary penalties or special training.

INDECOM, no matter how effective, cannot have sole responsibility for improving accountability in the police. This requires improved police accountability structures within the police and a criminal justice system that operates effectively.

¹³⁰ Amnesty International Dutch Section, Police Oversight: Police and Human Rights Program – Short Paper Series, Number 2, p6.

7. A FAILURE OF THE SYSTEM

Many of those interviewed by Amnesty International stated that they believed the recent decline in killings by police is probably a temporary lull, motivated by fear of INDECOM rather than genuine efforts by the police or political leaders to reform the police or hold it to account. There have been seven major reviews of the JCF over the past 27 years. The most recent strategic review was in 2008. It noted that many of the recommendations made in previous reviews had not been implemented¹³¹ and detailed a corrupt police culture which includes “contract killings and torture”.¹³² The report also stated: “The espoused values of the JCF are not integral to the culture... In essence, the internal accountability mechanisms in the JCF are not functioning as they should and significant effort is required to establish an internal accountability framework against which the Force can hold its members to account.” The 2008 review of the JCF made 124 recommendations for police reform, but implementation of these reforms has been piecemeal and nine years since that review, INDECOM continues to find that JCF commanders are routinely flouting JCF policy and failing to take steps to minimize the risk of deaths or injury.¹³³

In 2016, the Minister of National Security told Parliament that the Ministry intends to set a timetable for implementation of recommendations that have been made over the last 20 years. However, it is unclear if this includes recommendations made to the JCF.¹³⁴ The Minister did not meet Amnesty International, despite repeated requests.

Many stakeholders stated that a lack of political will at the top is hindering real reform of the police.¹³⁵ Despite INDECOM’s successes in overhauling investigations of alleged extrajudicial executions, it has said Parliament fails to review its reports and to make structural changes that could address policy issues around protecting the right to life that INDECOM identifies.¹³⁶

¹³¹ Ministry of National Security, ‘A New Era of Policing in Jamaica: Transforming the JCF, The report of the JCF Strategic Review Panel, p.18

¹³² Ministry of National Security, ‘A New Era of Policing in Jamaica: Transforming the JCF, The report of the JCF Strategic Review Panel, p. 26

¹³³ INDECOM, The INDECOM Quarterly, Planned Police Operations, April-June 2016, p. 6

¹³⁴ Ministry of National Security, ‘Pathway to a Safer and Prosperous Jamaica: Sectoral Debate,’ 6 July 2016

¹³⁵ Jamaica Gleaner, “Leadership lacking” - Failure of JCF, Parliament to implement recommendations crippling transformation of police force, stakeholders claim, ‘11 August 2016, Available at: <http://jamaica-gleaner.com/article/lead-stories/20160811/leadership-lacking-failure-jcf-parliament-implement-recommendations>

¹³⁶ Jamaica Gleaner, ‘Parliament fails to examine INDECOM reports’, 13 June 2016, Available at: <http://jamaica-gleaner.com/article/news/20150613/parliament-fails-examine-indecom-reports>

Amnesty International met with the board of the PCOA, which is responsible for monitoring police compliance with JCF guidelines, but was unable to obtain copies of its most recent reports, despite repeated requests to the board. The reports are not readily available online and local NGOs and embassies stated that they rarely receive copies of the reports. It is not clear how the JCF can be held accountable for implementing these recommendations if they are not publically available.

The recommendations made by the Commission of Enquiry in 2016 into the events that left almost 69 people dead after a joint military and police operation in 2010,¹³⁷ also provide a critical opportunity for the state to implement major reforms to the police. Yet at the time of writing, while a Parliamentary Committee had been established to review the recommendations of the Commission of Enquiry and to advise the Cabinet on the way forward, the Cabinet had not responded on how it intended to implement the proposed reforms.

While senior commanders would like the JCF to be perceived as a “foremost human rights entity”,¹³⁸ their failure to acknowledge responsibility for any deaths during the 2010 state of emergency, despite the volume of evidence collected during the Commission to the contrary, suggests a lack of commitment to meaningful human rights-based reform of the police.¹³⁹

According to the JCF, almost 6,000 police officers were trained in human rights and the use of force in 2015.¹⁴⁰ Human rights and use of force training is provided by the National Police College of Jamaica, with support from the US and UK governments and with local NGOs including Stand Up and Jamaicans for Justice. Trainee constables are exposed to instruction, which includes information on the international human rights framework, effecting arrests and conducting searches in accordance with human rights principles, among other issues. Corporals and superintendents also participate in a four-week course in which human rights relating to the use of force are emphasized throughout. Bilateral and multilateral donors provide technical support and specialist training to the police in a number of areas.¹⁴¹ The US government has been providing less lethal force training and equipment and body cameras to the JCF.

Nevertheless, despite this training, various sources told Amnesty International that because the prevailing police culture rejects human rights-based approaches, new recruits who report police misconduct or whistle blow are removed from the force or denied career advancement.

Training can only be effective if it corresponds to the overall institutional culture of the police and if the JCF leadership accepts greater accountability and transparency and rigorously implements recommendations made by INDECOM, the PCOA, local NGOs and binding rulings from local and international courts.

Reform and professionalization of the police will require a much stronger and integrated accountability system which includes criminal investigations, carried out by INDECOM, but goes beyond this to include disciplinary investigations in instances where police allegedly violate their own regulations, and safe spaces where police can review lessons learned to improve the functioning of the police.

¹³⁷ Jamaican Gleaner, ‘Tivoli Jackpot - High-Powered Lawyers At West Kgn Enquiry Cost Taxpayers \$150m, JDF Bill Alone \$71m’, 12 July 2016, Available at: <http://jamaica-gleaner.com/article/lead-stories/20160712/tivoli-jackpot-high-powered-lawyers-west-kgn-enquiry-cost-taxpayers>

¹³⁸ Interview with Jamaica Constabulary Force Senior Command, 15 April 2016

¹³⁹ When Amnesty International met with senior police officials in April 2016 and asked what lessons had been learnt from the events that transpired in Tivoli in 2010, senior police said: “We have an open mind. We are sure there are lessons... We might have been able to do things differently, but don’t see anything that should have been done differently.” One senior police said that it could not be concluded that police killed in Tivoli, and that “the evidence is not there.”

¹⁴⁰ Jamaica Constabulary Force, Annual Report, 2015

¹⁴¹ Amnesty International asked embassies for public documents related to the programs and technical support they provide to the police, however, these were not provided.

8. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The families, and especially women relatives, of victims of police killings in Jamaica are being denied justice and reparations by a system where impunity for these crimes remains pervasive. Amnesty International has documented violations of the right to life by the Jamaican Constabulary Force (JCF) for 20 years and, despite a decrease in the number of police killings in recent years, the way the police operate has changed little and extrajudicial executions and unlawful killings persist.

HOW TO MAINTAIN A CULTURE OF FEAR AND SILENCE

- FAILURE OF POLITICAL LEADERSHIP TO REFORM AND PROFESSIONALIZE THE POLICE
- MASKED POLICE
- FAILURE TO CONSISTENTLY REMOVE POLICE BEING INVESTIGATED FROM ACTIVE SERVICE
- HARASSMENT AND INTIMIDATION OF FAMILY AND WITNESSES BY POLICE IN MULTIPLE SPHERES
- UNLAWFUL DETENTION AND INHUMAN OR DEGRADING TREATMENT OF WITNESSES
- INTIMIDATION OF FAMILY MEMBERS AND WITNESSES BY POLICE IN THE COURTROOM
- INEFFECTIVE SYSTEMS FOR WITNESS PROTECTION
- LONG DELAYS BY THE SPECIAL CORONER'S COURT IN CONDUCTING INQUESTS, IN TURN SEVERELY DELAYING PROSECUTIONS
- DELAYS AND RELUCTANCE BY THE DIRECTOR OF PUBLIC PROSECUTIONS TO INVESTIGATE OR PROSECUTE CRIMES UNDER INTERNATIONAL LAW AND HUMAN RIGHTS VIOLATIONS
- FAILURE TO PROMPTLY AMEND THE INDECOM ACT TO CLARIFY ITS POWERS TO ARREST, CHARGE, INVESTIGATE, AND INITIATE PROSECUTIONS OF MEMBERS OF THE POLICE FORCE
- FAILURE BY PARLIAMENT TO IMPLEMENT REFORMS RECOMMENDED BY POLICE ACCOUNTABILITY STRUCTURES, THE POLICE CIVILIAN OVERSIGHT AUTHORITY, THE POLICE SERVICES COMMISSION AND INDECOM

In some cases the mental suffering inflicted on the families of those unlawfully killed by police and the intense and pervasive harassment and intimidation subsequently inflicted on them by police aimed at silencing them and punishing them further may amount cruel, inhuman and degrading treatment or punishment. The state has also violated the right to private and family life of relatives, for example when law enforcement officers harass and intimidate families in their homes or in intimate spaces such as funerals. Such police conduct drives a culture of fear, which in turn further entrenches impunity.

While the recent decline in killings by police is a positive development which can largely be attributed to the success of the Independent Commission of Investigations (INDECOM) in overhauling investigations and bringing prosecutions against police accused of unlawful killings, the state has failed to reform the JCF or to create a system that ensures accountability.

The cases detailed in this report highlight a situation of long-term, systemic impunity for police officers who commit human rights violations. These violations have been perpetuated by repeated failures to reform and professionalize the police and to hold those in the chain of command responsible for the actions of their subordinates. The following recommendations set out essential measures that if implemented could reverse the decades-long cycle of impunity and unlawful killings.

RECOMMENDATIONS

As part of this research, Amnesty International asked all those interviewed for their views on how to address unlawful killings, extrajudicial executions and police impunity in Jamaica. The following recommendations take into account their views and Jamaica's obligations under international law.

TO PARLIAMENT

- Publicly condemn extrajudicial executions, unlawful killings, ill-treatment of families by police, and or any other crime under international law or human rights violations, and send a clear and unequivocal message to the Jamaica Constabulary Force that they will no longer be tolerated and those committing such crimes will be investigated and prosecuted.
- Promptly ratify the Rome Statute of the International Criminal Court, signed by Jamaica on 8 September 2000, and incorporate it fully into national law.
- Promptly accede, without reservations, to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance, and incorporate them into national law. Jamaica should also recognize the competence of the Committee against Torture and the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims and other state parties.
- Progressively increase the budget assigned to Independent Commission of Investigations (INDECOM) to reduce dependence on international funding over time and ensure its sustainability.
- Promptly develop a time-bound plan, with indicators to measure progress, to implement the recommendations for police reform made by the Commission of Enquiry into the events in Western Kingston in 2010.¹⁴²
- Promptly establish a mechanism with responsibility for thoroughly reviewing recommendations from INDECOM and the Police Civilian Oversight Authority, and for giving effect to their recommendations when grounded in evidence and based on human rights standards.

¹⁴² Report of the Commission of Enquiry, Appointed to Enquire into Events which occurred in Western Kingston and related areas in May 2010, Chapter 15: Recommendations, p.477-493, June 2016.

- Promptly reform the Coroner’s Act and the operation and procedures of the Special Coroner’s Court to:
 - I. Expand the role of Special Coroner’s Court to make binding rulings for police reform;
 - II. Expand the role of the Special Coroner’s Court, which currently only establishes the cause of a death and whether a killing was lawful or not, to give the court a role in prevention and non-repetition of deaths;
 - III. Immediately allow INDECOM to act as an interested party in the Special Coroner’s Court;
 - IV. Expand legal aid to include legal representation for families in the Special Coroner’s Court;
 - V. Give the Special Coroner’s Court more autonomy over its budget and assign additional human resources, including additional courts and judges to address the backlog;
 - VI. Give the Special Coroner’s Court a role in policy-making by requiring from the Court presentation of periodic reports to the Chief Justice which make evidence-based recommendations for preventing killings by police, and make the report public.
- Promptly adopt revisions to INDECOM Act, ensuring in law that:
 - I. INDECOM explicitly has the power to issue arrest warrants, charge and, if there is sufficient admissible evidence, prosecute, as established by the Supreme Court ruling in 2013;¹⁴³
 - II. Clarify that the Act applies to on-duty and off-duty officers;
 - III. Clarify that INDECOM’s role is to both preserve and process crime scenes;
 - IV. Clarify that INDECOM can compel written statements from law enforcement officers.

TO THE JAMAICA CONSTABULARY FORCE

- Fully implement the Basic Principles with reference to Amnesty International’s Use of Force Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹⁴⁴
- Immediately remove from duty all police officers who have been charged with the crimes of manslaughter or murder or other crimes constituting human rights violations, without exception, until the investigation is concluded.
- Conduct thorough evaluations of officers and units involved in multiple fatal shootings to assess their suitability for future deployments. Establish very thorough internal supervision and control measures for these officers and units. For example, consider re-training of such officers and units, issuing warnings in relation to future conduct, and reducing responsibilities to assignments where the use of firearms is less likely.
- Revise the approach of carrying out planned arrests with a view to prevent the need to use (lethal) force.
- Ensure that police officers who are equipped with firearms are constantly evaluated for their suitability (not only through training, but also assessment of character and respect for regulations).
- Hold superior officers accountable if they knew or should have known of the unlawful use of force.
- Insist that police officers entering premises have search warrants and hold supervisors accountable for failure to oversee this.

¹⁴³ JCF et al v The Commissioner of INDECOM, [2013] Supreme Court, Claim No. 2011HCV06165

¹⁴⁴ Amnesty International, Use of Force: Guidelines for the Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, August 2015, Dutch Section, Police and Human Rights Programme, available at: https://www.amnesty.nl/sites/default/files/public/amnesty_use_of_force_final_web_0.pdf

- Strengthen police training to focus on communication and de-escalation and prevention of situations in which there is need to use force.
- Train police officers in medical first aid and ensure that operational plans include provisions for providing medical assistance to people injured by police action at the earliest possible moment.

TO MINISTRY OF NATIONAL SECURITY

- Constructively engage with international human rights organizations to increase transparency and accountability of the Ministry's response to violent crime and police oversight.
- Provide sufficient resources to fully implement the police reforms recommended in the last strategic review of the Jamaica Constabulary Force.
- Relocate the offices of the Police Civilian Oversight Authority to an independent building to give it greater independence from the Ministry of National Security and the Jamaica Constabulary Force in practice and in the eyes of the public.
- Address the unsustainably high turnover of personnel within the Jamaica Constabulary Force by increasing salaries for police and improving working conditions and professional training.
- Work with technical corporation partners and UN agencies to provide improved criminal investigation training for police.

TO THE MINISTRY OF JUSTICE

- Continue to urgently reform the criminal justice system to ensure victims have access within a reasonable time to a competent, independent and impartial tribunal.
- Refrain from utilizing the statute of limitations to deprive families of victims of unlawful police shootings from a civil remedy.
- Urgently continue to roll out video evidence technology to all courts, including to the Special Coroner's Court, to protect witnesses from intimidation and harassment.
- Request that judges thoroughly observe the actions of any police in the court room in cases of alleged criminal misconduct against the police, and when intimidating behaviour is observed judges should exclude officers from the court.
- Establish safe spaces or safe rooms in courthouses for witnesses and family members of victims allegedly killed by law enforcement officials to reduce intimidation and harassment in the court space.
- Facilitate relocating witnesses and families who need protection overseas, with their consent.
- In cases of police killings, provide funding for an independent pathologist.
- Work with the judiciary and international partners to develop guidelines and provide training for the judiciary on the treatment in court of family members of victims allegedly killed by law enforcement officials.
- Sensitize judges on how to treat unrepresented litigants, particularly in cases where it is alleged state agents have committed human rights violations.

TO THE DIRECTOR OF PUBLIC PROSECUTIONS

- Collaborate with INDECOM to bring prosecutions against all law enforcement officials where a prima facie case exists of criminal misconduct.
- Keep families informed of the progress and results of investigations and address any concerns the family may have.
- Provide written reasons if a decision is taken not to prosecute a law enforcement officer after a finding by the Special Coroner's Court of unlawful killing.
- Keep reliable statistics in relation to alleged killings and other alleged criminal misconduct by law enforcement officials and reflect these in the DPP's annual report.

TO THE INDEPENDENT COMMISSION OF INVESTIGATIONS (INDECOM)

- In communication campaigns, encourage witnesses and families of those killed by the police to report to INDECOM any harassment or intimidation they receive from police. Continue to investigate reports of intimidation and harassment or other ill-treatment, and protecting the identity of the alleged victims, bring these to the attention of senior command of the Jamaica Constabulary Force and the highest levels of the state.
- Appoint dedicated, trained, Family Liaison Officers to ensure families are kept regularly informed of the progress and results of investigations and to address any concerns the family may have.¹⁴⁵

THE POLICE SERVICES COMMISSION

- Establish clear responsibility of commanders to supervise and control their subordinates as to their compliance with the law, internal regulations and the UN Basic principles.
- Hold commanders accountable who are failing in this supervisory and control responsibility.

TO INTERNATIONAL CO-OPERATION OR DEVELOPMENT PROGRAMMES

- Advocate for immediate implementation of the recommendations emerging from the Commission of Enquiry.
- Express concern at the levels of widespread impunity in relation to alleged unlawful killings and extrajudicial executions by police.
- Continue to provide funding and technical support to INDECOM to expand its human resources and forensic and ballistic capabilities and to the Jamaica Constabulary Force to support its professionalization and internal accountability.
- Provide funding to local NGOs that provide legal support, accompaniment and advocacy for families of alleged unlawful killings.
- Continue to fund reform of the justice system, specifically to provide increased safety for witnesses and victims of alleged police killings and to improve the efficiency of the justice system.

¹⁴⁵ See Revised Minnesota Protocol, p. 20 (Para:74).

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info@amnesty.org



+44 (0)20 7413 5500

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WAITING IN VAIN

JAMAICA: UNLAWFUL POLICE KILLINGS AND RELATIVES' LONG STRUGGLE FOR JUSTICE

For decades, Jamaican communities, especially those in disenfranchised inner city neighbourhoods, have been scarred by an epidemic of unlawful killings by police. This report finds that, although the number of killings by police has fallen in the past two years, the way the police operate and unlawfully kill remains largely unchanged.

The vast majority of victims are young men and teenagers. The manner of their deaths and the failure of the state to bring those responsible to justice have a profound and lasting impact on their loved ones. Victims' families, and in particular women relatives, are left to face a long struggle for justice, as well as frequent intimidation and harassment by police.

The Jamaican authorities now have a unique opportunity to end endemic police impunity and strengthen police accountability. The families whose voices are at the heart of this report have lived with the systemic failures described for far too long. The authorities must act to protect them from pervasive police intimidation and harassment and guarantee their access to justice.

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