

Stakeholder submission of the Commonwealth Human Rights Initiative (CHRI) for the 2nd Universal Periodic Review of Jamaica

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**The Commonwealth Human Rights Initiative (CHRI) stakeholder submission for the 2nd
Universal Periodic Review of Jamaica
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This Universal Periodic Review (UPR) stakeholder submission for Jamaica includes information on the following areas: international human rights mechanisms, death penalty, torture and ill-treatment by law enforcement personnel, and Sexual Orientation and Gender Identity.

A. Cooperation with international human rights mechanisms, core international human rights instruments and their monitoring bodies

1. During the consideration of Jamaica's first UPR outcome at the Sixteenth Regular Session of the UN Human Rights Council, the delegation expressed a commitment to re-consider whether or not to ratify two core international Human Rights instruments, namely the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and the *International Convention for the Protection of All Persons from Enforced Disappearance*. During the UPR process the delegation also noted that it would consider ratifying a number of other instruments and their optional protocols.¹ However, since its last UPR Jamaica has ratified only one of the instruments referred to in the recommendations made at the last UPR, the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography*.²
2. Jamaica's treaty reporting record reflects continues to be irregular. At the time of writing, Jamaica had four overdue reports, including one to the Committee on Migrant Workers (due since 2010), two to the Committee on the Rights of the Child (due since 2004 and 2013 respectively), and another to the Committee on the Rights of Persons with Disabilities (due since 2010).³
3. Jamaica does not have a standing invitation for the Special Procedures mandate holders and during the last review it rejected all recommendations to issue one.⁴ The last time a Special Procedure Mandate Holder visited the country was when the Special Rapporteur on Torture visited in February 2010. Currently there are five visit requests pending, one of which has been pending since 2008.⁵
4. At its last UPR Jamaica received five recommendations related to establishing a national human rights institution (NHRI). Although it rejected all recommendations based exclusively on establishing a NHRI it agreed to seek external technical assistance including for the establishment of a NHRI.⁶ In this regard, the government has entered into discussions with the Commonwealth Secretariat's human rights team, seeking their help in establishing an Paris Principles compliant NHRI.⁷

¹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Jamaica – Addendum*, 11 March 2011, A/HRC/16/14/Add.1, at p. 2-3.

² See Office of the High Commissioner for Human Rights' (OHCHR) Country specific information on Jamaica's ratification of international Human Rights Treaties, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=JAM&Lang=EN (Last accessed on: 04 September 2014).

³ See OHCHR's information on Jamaica's treaty-body reporting cycles, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=JAM&Lang=EN (Last accessed on: 05 September 2014).

⁴ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Jamaica*, January 2011, A/HRC/16/14, at 101.5.

⁵ See OHCHR's Country specific information on Country and other visits by Special Procedures Mandate Holders, available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx> (Last accessed on: 05 September 2014).

⁶ *Supra* n. 4, at paragraphs 100.11 to 100.14, and 100.16; and n. 1, at paragraph (m).

⁷ Commonwealth Secretariat, *Commonwealth helping Jamaica set up human rights body*, 22 July 2014. Available at: <http://thecommonwealth.org/media/news/commonwealth-helping-jamaica-set-human-rights-body> (Last accessed on: 10 September 2014).

CHRI recommends that the Government of Jamaica:

- I. **demonstrate its commitment to the international human rights system by immediately extending an open invitation to all Special Procedures Mandate Holders of the UNHRC and facilitate, without further delay, the visit of all Mandate Holders whose requests are pending;**
- II. **ratify all core international human rights treaties and their optional protocols as a matter of priority and ensure full and timely compliance with all reporting obligations; and**
- III. **continue to cooperate with the Commonwealth Secretariat to establish a national human rights institution compliant with the Paris Principles at the earliest opportunity.**

B. Death penalty

5. During its previous UPR Jamaica received 11 recommendations to abolish the death penalty; acceding to the *Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty*; and formalising a moratorium on all pending executions; however, none of the 11 recommendations enjoyed Jamaica's support.⁸
6. In November 2011, the UN Human Rights Committee, too, noted that despite Jamaica being an *abolitionist de-facto* nation, which has not carried out any judicial executions since 1988, it is a matter of concern that it does not intend to abolish the death penalty.⁹
7. In 2011, Jamaica passed an Act which replaced Chapter III of the Constitution with a new Charter of Fundamental Rights and Freedoms.¹⁰ Although the Charter states that "[n]o person shall be subjected to torture or inhuman or degrading punishment or other treatment", it caveats the clause with the assertion that prolonged periods on death row, and conditions on death row, cannot amount to a breach of the torture provision.¹¹ The Charter may therefore fall foul of international human rights standards on the imposition of the death penalty.¹²

⁸ *Supra* n. 4, at paras. 101.6 to 101.16

⁹ UN Human Rights Committee, *Concluding Observations of reports submitted by State parties under article 40 of the Covenant – Concluding observations of the Human Rights Committee*, CCPR/C/JAM/CO/3, 103rd session, 17 November 2011, at paragraph 17.

Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJAM%2fCO%2f3&Lang=en (Last accessed on: 10 September 2014).

¹⁰ *The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011*. (Charter) Available at: [http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20\(Constitutional%20Amendment\)%20Act,%202011.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20(Constitutional%20Amendment)%20Act,%202011.pdf) (Last accessed on: 05 September 2014).

¹¹ *Ibid*, at. Article 13, sub-clauses (6) and (8).

¹² See, UN Human Rights Committee, *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982. Available at: [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fGEN%2f1%2fRev.9%20\(Vol.%20I\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fGEN%2f1%2fRev.9%20(Vol.%20I)&Lang=en). (Last accessed on: 10 September 2014); and *Aitken v. Jamaica*, Case 12.275, Inter-Am. C.H.R., OEA/Ser./L/V/II.111, doc. 20 rev., Ch. III, para. 38 (2000). Available at: http://www.worldcourts.com/iacmhr/eng/decisions/2000.05.02_Aitken_v_Jamaica.pdf. (Accessed on: 10 September 2014). In *Denton Aitken v. Jamaica*, the Inter-American Commission on Human Rights held that the detention conditions of the individuals on the death row, when considered in light of the lengthy period of almost four years, had failed to satisfy the standards of humane treatment as enshrined under Article 5 (1) and (2) of the Inter-American Convention on Human Rights. See, UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 09 August 2012, A/67/279, at paragraph 44. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement> (accessed on 10 September 2014); and UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum – Follow-up to the recommendations made by the Special*

8. During the intervening period between Jamaica's first two UPRs no executions have been reported, however, in 2011 it was reported that at least 4 people received death sentences. Amnesty International reported that by the end of 2013 Jamaica had 7 people on death row.¹³ The continuation on death row of these individuals requires monitoring to ensure that it is not in contravention of international standards on torture and cruel or inhuman forms of treatment or punishment.¹⁴

CHRI recommends that the Government of Jamaica:

- I. sign the *Second Optional Protocol to the International Covenant on Civil and Political Rights*;**
- II. ensure that its legislation concerning individuals on death row is in line with human rights standards; and**
- III. intensify efforts to formalise the country's moratorium and work towards the repeal of the death penalty.**

C. Torture and ill-treatment by law enforcement personnel

9. As mentioned above, during its previous UPR Jamaica agreed to consider and decide upon ratifying the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*; however, it has not signed this treaty.¹⁵
10. Since the last review Jamaica has passed a Charter of Fundamental Human Rights and Freedoms, which guarantees (subject to certain limitations) that no person shall be subjected to torture or inhuman treatment.¹⁶ However, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has expressed concern over the lack of a definition of torture as a separate crime in Jamaican legislation.¹⁷
11. The Inter-American Human Rights Commission reported that "the Jamaican government's child-care system suffers from disturbing levels of sexual, physical and mental abuse of children at the hands of caregivers, and urgently requires reform and additional resources."¹⁸ More recently, allegations regarding the ill-treatment of detainees by prison guards have been made.¹⁹ Moreover, conditions in detention facilities continue to be unsatisfactory.²⁰ In 2013, the Independent Commission of Investigations (INDECOM) reported on extreme overcrowding in Jamaica's prisons, noting various incidents, including one where a prison facility designed for 30 detainees was holding 89 detainees.²¹ Such dire conditions continue

Rapporteur visit to Jamaica, A/HRC/19/61/Add.3, 01 March 2012, at p. 145. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/111/23/PDF/G1211123.pdf?OpenElement> (Last accessed on: 05 September 2014).

¹³ Amnesty International, *Annual Report – Jamaica*, available at: <http://www.amnesty.org/en/region/jamaica/report-2013>. (Last accessed 8 September 2014).

¹⁴ See, *Earl Pratt and Ivan Morgan v. The Attorney General for Jamaica and The Superintendent of Prisons, Saint Catherine's, Jamaica Co (Jamaica)*, [1993] UKPC 37 (2 November 1993). Available at: http://www.bailii.org/uk/cases/UKPC/1993/1993_37.html (Last accessed on: 05 September 2014).

¹⁵ *Supra* n. 1 and 2.

¹⁶ *Supra* n. 10 at Article 13(6).

¹⁷ *Supra* n. 12, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, at paragraph 48.

¹⁸ IACHR, Report on the Situation of Human Rights in Jamaica 2012, OEA/Ser. I/V/II.144, Doc.12, 10 August 2012, at p. 243. Available at: <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> (Last accessed on: 10 September 2014).

¹⁹ Freedom House, *Freedom in the World – Jamaica*, 01 August 2014. Available at: <http://www.refworld.org/docid/53df8c7514.html> (Last accessed on: 05 September 2014).

²⁰ *Ibid.*

²¹ INDECOM, *Safeguarding the Right to Life: Issues from Investigations of Jamaica's Security Forces in 2012*, 23 March 2013, at pages 51 and 52.

Available at: <http://www.indecom.gov.jm/Release/Safeguarding%20the%20Right%20to%20Life.pdf> (Last accessed on: 10 September 2014).

to prevail in Jamaican detention facilities despite the government's commitment to address conditions of detention during its previous UPR.²²

12. Of most concern to CHRI, in the absence of a National Human Rights Institution, is the ability of Jamaica's national institutions to effectively monitor situations where torture and ill-treatment might be practiced. CHRI shares the concerns of a number of organisations in relation to the capacity of the Office of the Public Defender to effectively handle all human rights complaints it receives, due to its limited staffing; and the ability of the Independent Commission of Investigations to hold police officials accountable for abuses as a result of Officers challenging its authority.²³

CHRI recommends that the Government of Jamaica:

- I. accede to the UN Committee Against Torture and its *Optional Protocol*;**
- II. work to ensure the successful functioning of an effective independent police oversight mechanism and impartial police complaints and misconduct authority; and**
- III. undertake a review of the effectiveness of the country's national institutions which have a role in combating torture or other forms of inhuman or degrading treatment or punishment.**

D. Sexual Orientation and Gender Identity

13. During its previous UPR, Jamaica accepted only one recommendation related to sexual orientation and gender identity. The Government committed itself to sensitising law enforcement personnel to issues of sexual orientation and gender identity.²⁴ At the follow up session before the UNHRC, the delegation noted that sexual orientation remains a sensitive topic but the government will endeavour to take necessary steps to address the concerns of all individuals.²⁵ It is therefore disappointing to note that the Jamaican government's new Human Rights Charter failed to incorporate the right to non-discrimination on grounds of sexual orientation and gender identity.²⁶
14. Jamaica continues to criminalise consensual same-sex relationships by retaining provisions under its Offences Against the Person Act (OAPA).²⁷ Under the OAPA, the "abominable crime of buggery" with a man is criminalised, as is an attempt to commit the same.²⁸ Moreover, "[a]ny male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour."²⁹
15. During the intervening period since its last UPR, media reports have indicated that the LGBT community in Jamaica continue to face state sponsored harassment. For example, in October 2013, it was reported that Jamaican police were accused of burning the property of a group of gay and bisexual men, living in New Kingston; in another incident in October 2013, it

²² *Supra* n. 4, at paragraphs 99.8, 99.9, and 99.10.

²³ Redress, *Torture in the Americas: The Law and Practice*, June 2013, at p. 29. Available at: <http://www.redress.org/downloads/publications/130626%20Torture%20in%20the%20Americas.pdf> (Last accessed on: 05 September 2014).

²⁴ *Supra* n. 4, paragraphs 98.37, 101.18 to 101.25, and 102.1.

²⁵ *Supra* n. 1, at p. 6.

²⁶ *Supra* n 10.

²⁷ *Supra* n. 9, at paragraph 8.

²⁸ Article 76 & 77, OAPA available at http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf.

²⁹ Article 79, OAPA.

was reported that the residence of four gay men in St. James was fire-bombed, following which the attending police officers refused to take the residents into protective custody.³⁰

16. While the police response to the SOGI community remains an area of concern, the Court's of Jamaica have provided a degree of protection. Following attempts by police to forcibly evict a group of homeless young LGBT individuals from sewers in New Kingston, it was reported that a local New Kingston court ruled that the police could not forcibly remove the youths as sewers are public spaces.³¹

CHRI recommends that the Government of Jamaica:

- I. review its legislation with a view to decriminalising consensual same-sex activities between adults. The criminalisation of same-sex activities is incompatible with Jamaica's human rights obligations, entrenches homophobia and reinforces stigma and prejudice based on sexual orientation.**
- II. ensure that all persons, regardless of sexual orientation are protected from harassment at the hands of state and non-state actors by undertaking an extensive programme of public education based on the Yogyakarta principles; and**
- III. promote and facilitate a constructive dialogue on sexual orientation and gender identity with all relevant stakeholders, including government ministries, civil society and religious leaders.**

³⁰ Tris Reid-Smith, *Jamaican police 'burnt out' homeless gays*, Gay Star News, 18 October 2013; <http://www.gaystarnews.com/article/jamaican-police-burn-out-homeless-gays181013>; Greg Hernandez, *House in Jamaica where Dwayne Jones last lived fire-bombed by mob – four gay men flee for lives*, Gay Star News, 10 October 2013: <http://www.gaystarnews.com/article/house-jamaica-where-dwayne-jones-last-lived-firebombed-mob-four-gay-men-flee-lives101013> (Last accessed on: 05 September 2014).

³¹ Sunnive Brydum, *Judge Rules Homeless Jamaican LGBT Youth Can Keep Living in Sewers*, Advocate, 12 March 2014. Available at: <http://www.advocate.com/world/2014/03/12/judge-rules-homeless-jamaican-lgbt-youth-can-keep-living-sewers>; *Jamaica's Underground Gays*, Channel 4, 23 May 2014. Available at: <http://www.channel4.com/programmes/unreported-world/4od#3705272> (Last accessed on: 05 September 2014).