

I. INTRODUCTION

A. Executive Summary

1. During Jamaica's 2010 Universal Periodic Review (UPR), numerous States expressed concern about reports of unlawful police killings and excessive use of force, as well as impunity and corruption within the Jamaican Security Forces.¹ Jamaica assured the Human Rights Council that it shared these concerns and had implemented a number of measures to combat them.² In particular, it had created an independent commission to investigate unlawful police killings and excessive use of force, and had established a special coroner's office to conduct inquests into security force-related deaths.³ These measures, however, have had little remedial effect on the human rights abuses taking place in Jamaica. The new agencies have neither the resources nor the political power necessary to effectively reduce unlawful police killings on the island, resulting in violations of the right to life, humane treatment, fair trial, and judicial protection. The above stakeholders therefore urge the Human Rights Council to make a series of recommendations that would bring Jamaica's domestic law and practice into conformity with its international obligations.

B. Methodology

2. This report is respectfully submitted by the International Human Rights Clinic (IHRC) of Loyola Law School, Los Angeles; the human rights organization Jamaicans for Justice (JFJ), an NGO with Consultative Status in ECOSOC; and a coalition of stakeholders listed in Annex A.⁴

3. The information presented here includes first-hand investigative findings by JFJ; facts related to cases litigated by JFJ and the IHRC in international fora; and findings made by other non-governmental organizations. The authors further relied on media and other outside sources, including representations that the state of Jamaica has made to various international bodies, since much of the necessary information is under state control and remains difficult to access.

II. THE PROBLEM

4. A documented pattern of unlawful police killings and excessive use of force has existed in Jamaica since the early 1970s.⁵ Jamaica has averaged 200 fatal police shootings per year since

¹ See e.g., Report of the Working Group on the Universal Period Review: Jamaica, A/HRC/16/14 at 7-12 (Jan. 4, 2011) [hereafter: *Universal Periodic Review: Jamaica*].

² *Id.* at 9.

³ *Id.* at 5.

⁴ The IHRC is run by Director Cesare Romano, Professor of Law and W. Joseph Ford Fellow, and Deputy Director Veronica Aragón, Adjunct Professor, Esq. They have supervised and directed the preparation of this petition by Janna Brancolini with assistance from Leah Molayem, both third-year law students. In-country support and expertise were provided by Jamaicans for Justice (JFJ), a highly regarded NGO that provides legal support and representation to victims of unlawful killings and excessive use of force by Jamaica's security forces. The organizations listed in Annex A.a are also stakeholders in this report.

⁵ See e.g., Jamaicans For Justice & The George Washington University Law School International Human Rights Clinic, *Killing Impunity: Fatal Police Shootings and Extrajudicial Executions in Jamaica: 2005-2007* at 9 (Mar. 18, 2008) (submitted to the Inter-Am. Comm'n H.R. on Mar. 20, 2008) [hereafter: *Killing Impunity*] (Annex B1); see also Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Mr. Manfred Nowak, Mission to Jamaica, A/HRC/16/52/Add.3 (11 October 2010), para. 34-35.

1998⁶, and since Jamaica’s 2010 UPR, security forces have continued to kill an average of 254⁷ civilians per year — an alarmingly high number for an island with only 2.6 million residents.⁸ Many of these deaths occur despite the victims posing no danger to police.⁹ Officers frequently report that victims were killed in shoot-outs — even when the officers themselves did not sustain injuries; the victim was unarmed according to witnesses; and/or the victims’ injuries were inflicted from the back instead of the front.¹⁰

5. Although Jamaica’s police force remains “among the deadliest in the world,” between 1999 and 2013, only four police officers were convicted of murder.¹¹ This near-complete impunity has led to the perception in Jamaica that the police are above the law.¹² In Jamaica, each stage of the judicial process is plagued with irregularities, deficiencies, and delays that deprive victims and their families of justice and reinforce police impunity.

6. Prior to 2010, the Bureau of Special Investigations (BSI) was the agency tasked with investigating potentially unlawful police killings. BSI was beset by investigative irregularities and chronic resource shortages, and by 2011 it had a backlog of 279 cases, some of which were more than two years old.¹³ In 2010, Parliament created the Independent Commission of Investigation (INDECOM) to take over and investigate actions by members of the Security Forces and other State agents resulting in death or injury of persons, or in the abuse of human rights.¹⁴

⁶ *INDECOM Reporting Spike in Killings*, THE GLEANER, <http://jamaica-gleaner.com/latest/article.php?id=47891> (Sept. 30, 2013) (last accessed Feb. 25, 2014).

⁷ Police fatally shot a shocking 320 civilians in 2010. *Killing Impunity*, *supra* note 6, at 9. In 2011, there were 232 fatal police shootings. Jerome Reynolds, *Fatal Police Shootings Down*, The Gleaner, <http://jamaica-gleaner.com/latest/article.php?id=42049> (Jan. 2, 2013) (last accessed Aug. 5, 2014). In 2012, INDECOM initiated investigations into 219 fatalities involving security forces. In 2013, security forces fatally shot 245 civilians and fatally stabbed 1. INDECOM, *INDECOM’s Statistics on Security Force Related Fatalities – 2013*, at 3 (Jan. 14, 2014), available at: <http://indec.com.gov.jm/2013%20Statistics%20Press%20Release.pdf> (last accessed Feb. 25, 2014) [hereafter: *INDECOM’s Statistics 2013*].

⁸ *Al Jazeera Turns Spotlight on Jamaican Police Killings*, THE GLEANER (Apr. 30, 2010), <http://jamaica-gleaner.com/gleaner/20100430/lead/lead4.html> (last accessed Jan. 21, 2014) [hereafter: *Al Jazeera Turns Spotlight*]. In 2010 alone, more than 20 percent of killings in Jamaica were at the hands of State security forces. Jamaicans for Justice, “One in Five Killings in Jamaica Committed by Security Forces,” Press Release, Jan. 13, 2010, <http://jamaicansforjustice.org/2011/01/13/jfj-press-release-one-in-five-killings-in-jamaica-committed-by-security-forces/> (last accessed Aug. 5, 2014).

⁹ Jamaicans For Justice, *NGO Report on the Implementation of the ICCPR*, ¶ 7 (October 11-29, 2010), available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/JFJ_Jamaica100.pdf (last accessed Jan. 21, 2014) [hereafter: JFJ, *NGO Report on Implementation of ICCPR*].

¹⁰ Report on the Situation of Human Rights in Jamaica, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.144 Doc. 12, ¶ 44 (Aug. 10, 2012) [hereafter: *IACommHR Report on Human Rights*].

¹¹ *Al Jazeera Turns Spotlight*, *supra* note 9; *IACommHR Report on Human Rights*, *supra* note 11, at 20 (see Table 3). Paul Henry, *Cop Gets Life for Murder*, THE JAMAICA OBSERVER (Nov. 6, 2013), available at: http://www.jamaicaobserver.com/news/Cop-gets-life-for-murder_15395345 (last accessed Feb. Aug. 5, 2014) [hereafter: Henry, *Cop Gets Life for Murder*].

¹² *IACommHR Report on Human Rights*, *supra* note 11, ¶ 42.

¹³ INDECOM, *Confronting the Challenges: A Report on INDECOM’s First Year, Current Investigations, and a Special Investigation into the Identification of JCF and JDF Personnel During Operations*, ¶ 2.22 (2011), available at: <http://indec.com.gov.jm/Release/ConfrontingTheChallenges.pdf> (last accessed Aug. 3, 2014) [hereafter: *INDECOM. Confronting the Challenges*].

¹⁴ *About Us*, THE INDEPENDENT COMMISSION OF INVESTIGATIONS, http://indec.com.gov.jm/about_us.htm (last accessed Jan. 12, 2014); Amnesty International, *Jamaica - ‘Let Them Kill Each Other’: Public Security in Jamaica’s Inner Cities*, AMR 38/001/2008, at 9, 28 (Apr. 2008), available at:

7. The Jamaican Constabulary Force (JCF) responded by bringing court cases challenging INDECOM's authority to take statements, make arrests, and charge and prosecute security force personnel. Although these powers have been affirmed by the Supreme Court, JCF officers suspected of participating in or witnessing extrajudicial executions can and do refuse to give evidence against their colleagues, and senior officers are known to vet statements made by officers before they are presented to INDECOM.¹⁵ JCF officers also sometimes wait several hours to inform INDECOM of fatal shootings, reportedly giving officers the opportunity to remove or interfere with vital forensic and ballistics evidence after the shooting but before INDECOM is called.^{16 17} Since its inception in 2010, and up to January 2014, INDECOM has referred only 39 cases to the DPP.¹⁸

A. Lack of Independence in Investigations

8. JCF officers are still intimately involved in the investigation of their colleagues after a fatal incident. Police typically give orders for the medical practitioner to perform post mortem examinations,¹⁹ and act as bailiffs and summon jurors in later inquests before the Special Coroner.²⁰

9. The JCF's Forensic Division processes most of INDECOM's crime scene evidence and contributes significantly to the delays in INDECOM's investigations. According to the 2012 quarterly report submitted to Parliament by INDECOM:

*The ability to complete investigations of fatal incidents is largely dependent on external factors. One such external factor is the slow pace at which scientific evidence is processed by the Government Forensic Laboratory ("Forensic Lab"). ...61.5% of the fatality cases under investigation would have been complete if Ballistics Certificates and other Forensic Certificates had been furnished by the Forensic Lab.*²¹

<http://www12.georgetown.edu/sfs/clas/pdba/Security/citizenssecurity/jamaica/evaluations/innercities.pdf> (last accessed Jan. 21, 2014) [hereafter: Amnesty Int'l., *Let Them Kill Each Other*].

¹⁵ INDECOM, *Confronting the Challenges*, *supra* note 14, ¶ 2.44.

¹⁶ IACommHR Report on Human Rights, *supra* note 11, ¶ 106.

¹⁷ INDECOM, *Confronting the Challenges*, *supra* note 14, ¶ 2.44.

¹⁸ Edmond Campbell, *INDECOM Gives Thumbs Up in Most Questionable Incidents*, THE GLEANER (July 19, 2003), <http://jamaica-gleaner.com/gleaner/20130719/lead/lead2.html> (last accessed Jan. 21, 2014).

¹⁹ Jamaicans for Justice, *Reform Matters eBrief*, Vol. 2, No. 1 at 3 (January-March 2009) [hereafter: *Reform Matters Vol. 2, No. 1*] (Annex B2). Jamaicans for Justice, *Reform Matters eBrief*, Vol. 1, No. 4 at 6 (October-December 2008) [hereafter: *Reform Matters Vol. 1, No. 4*] (Annex B3). The amended Coroner's Act gives the Coroner the power to appoint a special bailiff to summon witnesses, but Jamaicans for Justice reported in 2009 that this never happens. *Reform Matters Vol. 2, No. 1* at 3.

²⁰ *Reform Matters Vol. 1, No. 4*, *supra* note 20, at 6. The amended Coroner's Act gives the Coroner the power to appoint a special bailiff to summon witnesses, but Jamaicans for Justice reported in 2009 that this never happens. *Reform Matters Vol. 2, No. 1*, *supra* note 20, at 3.

²¹ INDECOM, *Quarterly Report to Parliament*, at 12 (2012), available at: <http://www.indecom.gov.jm/Release/Report%20to%20Parliament.pdf> (last accessed Aug. 3, 2014).

10. Further, as a sub-department of the JCF, the Forensics Division budget is determined by the JCF Commissioner.²² The Auditor General has recognized this lack of independence in investigations in her report to Parliament:

*[The Forensic Services Laboratory] FSL is a department within JCF and receives its budgetary allocations under the JCF recurrent budget, managed by JCF Finance Branch. In addition, 24 ballistic experts and technical Officers assigned to FSL are police officers, who inevitably conduct forensic analyses on evidence in cases involving their colleagues. These circumstances could give rise to potential conflicts of interest, and FSL's independence and that of the 24 ballistic experts and technical officers could be compromised.*²³

11. INDECOM has lobbied for the establishment of its own forensics laboratory in a bid to conduct its own ballistic analysis of evidence. Although it has received financial assistance to secure equipment and experts,²⁴ the independent body is still hampered by the fact that pursuant to Section 46(4) of the Firearms Act²⁵ only the Commissioner of Police is authorized to designate someone as a ballistics expert. INDECOM's request for its own ballistics expert to be designated as such by the Commissioner of Police has been met with opposition — despite there being no certified expert in Jamaica, and despite the fact that experts employed by INDECOM possess superior qualifications and experience, namely certification from a major certifying body for ballistics experts.²⁶

12. The investigatory failures that still exist under INDECOM create a ripple effect that cause delays in charging officers with unlawful killings and holding inquests into the victims' deaths.

B. Prosecutorial Delays

13. Generally, the Office of the Director of Public Prosecutions (DPP) determines whether to go forward with the prosecution of a case. Like other institutions within the Jamaican justice system, the DPP struggles with insufficient resources and is beset by institutional bias against prosecuting the police. While BSI referred over 1,500 police shooting cases to the DPP between 1999 and 2007, the DPP decided to pursue criminal proceedings in fewer than 10 percent of those cases.²⁷ Between 2006 and 2008, the DPP charged only 4.5 percent of the officers under investigation for fatal shootings.²⁸

14. In 2010, it took the DPP 27 months on average to decide whether even to bring charges against JCF members suspected of unlawful killings.²⁹ Delays of up to 6 years have been

²² Interview with Dr. Judith Mowatt, Director, JCF Forensics Division (Kingston, Jamaica, Dec. 4, 2013).

²³ Jamaica Auditor General, *Report On The Financial Transactions And Financial Statements Of The Government Of Jamaica For The Financial Year Ended 31st March, 2013* at 68 (Dec. 23, 2013), available at: http://www.auditorgeneral.gov.jm/files/u5/AGD_ANNUAL_REPORT_2013.pdf (last accessed Aug. 3, 2014).

²⁴ Alessandro Boyd, *INDECOM's Investigative Capacity Gets Forensic Boost*, THE GLEANER (Oct. 19, 2012), <http://jamaica-gleaner.com/gleaner/20121019/news/news1.html> (last accessed Aug. 3, 2014).

²⁵ Firearms Act (1967), available at: <http://moj.gov.jm/sites/default/files/laws/Firearms%20Act.pdf>.

²⁶ *IACommHR Report on Human Rights*, *supra* note 11, ¶ 106.

²⁷ *Final Report*, Jamaican Justice System Reform Task Force, ¶ 103 (June 2007), http://www.cba.org/jamaicanjustice/pdf/jjsrtf_report_final.pdf (last accessed Jan. 21, 2014).

²⁸ Amnesty International, *Public Security Reforms and Human Rights in Jamaica*, AMR 38/001/2009, at 12 (2009) (Annex B6).

²⁹ *INDECOM, Confronting the Challenges*, *supra* note 14, ¶ 2.13.

reported, and as of 2013, cases referred to the DPP as far back as 2009 were still awaiting rulings.³⁰ In 2012, the Inter-American Commission of Human Rights urged Jamaica to adopt measures aimed at strengthening the DPP, “so that it may perform its duties with the effectiveness required to address the serious problem of police impunity.”³¹ The following year, the DPP blamed its low level of convictions on a lack of facts due to inadequate investigations.³² While the investigations are in fact inadequate, the DPP exacerbates the problem by refusing to charge officers unless presented with the full results of an investigation. For example, the DPP typically refuses to charge JCF officers until her office has received the results of forensic tests.³³

C. Delays in Coroner’s Inquests

15. To address the gross delays in processing Coroner’s Court cases, the Coroner’s Act was amended in 2008 to establish the Office of the Special Coroner to hold inquests into killings involving security forces.³⁴ The position, however, was not filled until 2011, and as of March 2013, the Special Coroner had a backlog of 300 cases and a caseload that was growing by 60 to 80 cases each year. The Special Coroner only has enough resources to resolve about 60 cases per year.³⁵ It still takes more than 5 years on average for the Coroner’s Court to resolve cases involving death at the hands of agents of the state.³⁶

16. Jamaica’s trial court system — the Supreme Court — also suffers many of the same problems as the Coroner’s Court. It has a backlog of almost 500 cases³⁷ due to infrequent sittings, inadequate juror availability, witness intimidation and absenteeism, and inadequate staffing and resources.³⁸ Cases involving security forces are further hampered by two critical evidentiary problems: admissibility of statements that are the product of collusion, and admissibility of compelled answers. First, the JCF high command believes their officers have the right to confer with one another before giving statements to INDECOM concerning on-duty

³⁰ See e.g., the case of Omar Evans (referred to the DPP in 2003; no ruling until 2009), the cases of Paul Wallace, Anthony Nelson, and Jevaughn Robinson. Jamaicans for Justice, *Delays in the Administration of Justice* (Dec. 2012) (Annex B4) [hereinafter: JFJ, *Delays in the Administration of Justice*].

³¹ IACommHR Report on Human Rights, *supra* note 11, ¶ 138.

³² DPP Explains Low Conviction Rate in Gun Court, THE GLEANER, (July 5, 2013), <http://jamaica-gleaner.com/latest/article.php?id=46239> (last accessed Jan. 21, 2014).

³³ INDECOM, *Confronting the Challenges*, *supra* note 14, ¶ 2.26.

³⁴ Coroner’s Act §5A (2008), <http://www.jamaicalawonline.com/revised-laws/statutes/114-CORONERS%20ACT.html>, (last accessed Jan. 21, 2014)).

³⁵ Carolyn Gomes, Editorial: *Special Coroner Asked to Achieve the Impossible*, THE GLEANER (March 9, 2013), <http://jamaica-gleaner.com/gleaner/20130309/letters/letters4.html> (last accessed Jan. 21, 2014) [hereafter: *Special Coroner Asked*].

³⁶ *Id.*

³⁷ Barbara Gayle, *Justice Delayed- Six Years in Custody Without a Trial*, THE GLEANER (June 10, 2012), <http://jamaica-gleaner.com/gleaner/20120610/lead/lead9.html> (last accessed Aug. 5, 2014).

³⁸ Barbara Gayle, *MISSING JURORS-Further Cripple Crawling Justice System*, THE GLEANER (July 3, 2011), <http://jamaica-gleaner.com/gleaner/20110703/news/news5.html> (last accessed Aug. 5, 2014) [hereafter: Gayle, *Missing Jurors*]; Barbara Gayle, *Shortage of Judges Delay Justice*, THE GLEANER (May 11, 2008), <http://jamaica-gleaner.com/gleaner/20080511/lead/lead4.html> (last accessed Aug. 5, 2014) [hereafter: Gayle, *Shortages of Judges*]; *Supreme Court to Get Additional Staff to Quicken Judgment Delivery Time*, THE JAMAICA OBSERVER (February 3, 2014), <http://www.jamaicaobserver.com/latestnews/Supreme-Court-to-get-additional-staff-to-quicken-judgement-delivery-time> (last accessed Aug. 5, 2014) [hereafter: *Supreme Court to Get Additional Staff*]; *Backlog of Court Cases Attributed to a Lack of Resources*, RJR NEWS ONLINE (January 7, 2013), <http://rjrnews.com/local/backlog-of-court-cases-attributed-to-lack-of-resources> (last accessed Aug. 5, 2014) [hereafter: *Backlog of Court Cases*].

officer-involved killings. These coordinated statements are admissible in court, which seriously undermines court proceedings.³⁹ A second, related problem is that even when INDECOM is able to obtain potentially forthright statements, those statements can be ruled inadmissible if they were compelled. Jamaican common law prohibits admission of statements that are not voluntarily made, so if a statement is compelled — even if compulsion is done pursuant to the INDECOM Act — it is likely to be ruled inadmissible.⁴⁰

17. Officer statements are especially critical to judicial proceedings because civilian statements are often insufficient in security force cases. Officers wear masks and conceal their badges, which impedes civilian identification of the involved officers. Trials concerning unlawful police killings and excessive use of force are therefore heavily dependent on officer statements.⁴¹ Thus, despite Jamaica's promises to reform, police impunity and gross delays of justice persist.

III. JAMAICA'S LEGAL OBLIGATIONS

18. As a member of the United Nations, Jamaica is obligated to uphold the rights and principles enumerated in the Universal Declaration of Human Rights.⁴² As a State party to the International Covenant on Civil and Political Rights, it has voluntarily bound itself to protect and promote the rights enshrined therein.⁴³ Finally, Jamaica is also bound by the American Convention on Human Rights.⁴⁴ This report discusses those rights guaranteed by these instruments that are implicated by Jamaica's continued impunity regarding unlawful police killings and excessive use of force.

IV. VIOLATIONS OF JAMAICA'S LEGAL OBLIGATIONS

19. Jamaica is in violation of its obligation to protect the right to life and right to humane treatment of all persons within its jurisdiction.⁴⁵ It is further in violation of its obligation to respect the right to a fair trial and judicial protection.⁴⁶

³⁹ INDECOM, *Safeguarding the Right to Life: Issues from Investigations of Jamaica's Security Forces in 2012*, at pgs. 4-6 (2012), available at: <http://www.indecom.gov.jm/Release/Safeguarding%20the%20Right%20to%20Life.pdf> (last accessed on Feb. 25, 2014) [hereafter: *Safeguarding the Right to Life*].

⁴⁰ INDECOM, *Confronting the Challenges*, *supra* note 14, at pgs. 35-36.

⁴¹ *Ibid.*

⁴² Jamaica was admitted into the UN on Sept. 18, 1962. *Member States of the United Nations*, THE UNITED NATIONS, <http://www.un.org/en/members/#j> (last accessed Feb. 25, 2014).

⁴³ Jamaica signed the ICCPR on Dec. 19, 1966 and ratified it on Oct. 3, 1975. *Status, International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last accessed Feb. 25, 2014).

⁴⁴ Jamaica signed the American Declaration on July 19, 1978, and ratified it Aug. 7, 1978. *American Convention on Human Rights: Signatories and Ratifications*, ORGANIZATION OF AMERICAN STATES, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm (last accessed Feb. 25, 2014).

⁴⁵ Universal Declaration provisions: Article 3 right to life, Article 4 right to humane treatment. ICCPR provisions: Article 6 right to life, Article 7 right to humane treatment. *Universal Declaration of Human Rights*, Dec. 16, 1949, available at: <http://www.ohchr.org/en/udhr/pages/introduction.aspx> (last accessed Aug. 5, 2014). American Convention: Article 4 right to life, Article 5 right to humane treatment. *American Convention on Human Rights*,

A. Right to Life

20. The right to life imposes upon States both a positive duty to protect life and a negative duty not to arbitrarily deprive individuals within their jurisdictions of life.⁴⁷ The right to life is the most important of all human rights because life is a precondition for the exercise of any other right. To that end, derogation is not permitted even in a time of public emergency.⁴⁸ Jamaica, however, consistently blames the violence committed by State agents on the country's ongoing fight against organized crime.⁴⁹ Although we are sympathetic to the difficulties Jamaican security forces face fighting organized crime and drug trafficking, the State must continue to respect the right to life and prevent unlawful police killings. It must do so even in times of public emergency.

21. States' domestic law must "strictly control and limit the circumstances" in which State authorities can deprive an individual of life.⁵⁰ Police use of force must also follow the principles of legality, necessity, and proportionality.⁵¹

22. The principle of legality provides that use of force must serve a legitimate end. The principle is violated when individuals are deprived of life on grounds that are either not established by domestic law or are contrary to such law.⁵² State agents' use of force must also be necessary to achieve a legitimate end proportionate to the resistance offered.⁵³ Police may only use intentional, lethal force where strictly unavoidable in order to protect life, such as in the case of self-defense or to protect third parties from a serious threat to life.⁵⁴ Even then, force may not be used unless less extreme measures are insufficient to achieve these goals.⁵⁵ Police are generally expected to warn suspects and give them an opportunity to surrender or explain their presence or intentions before resorting to force.⁵⁶ Law enforcement should also have a range of non-lethal tools for effecting arrests in a way that prevents death or serious injury to suspects.⁵⁷

Nov. 22, 1969, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (last accessed Aug. 5, 2014).

⁴⁶ Universal Declaration provision: Article 10 right to a fair trial. ICCPR provisions: Article 14 right to a fair trial. American Declaration provisions: Articles 8 and 25 right to a fair trial and judicial protection, and Article 2 right to domestic legal effects.

⁴⁷ Universal Declaration Art. 3, ICCPR Art. 6, American Convention Art. 4.

⁴⁸ *HRC General Comment No. 6: The Right to Life (Art. 6)*, OFFICE OF THE HIGH COMMISSION FOR HUMAN RIGHTS, ¶ 1 (16th Session, April 30, 1982), available at: <http://www2.ohchr.org/english/bodies/treaty/comments.htm> (last accessed Feb. 25, 2014).

⁴⁹ Inter-Am. Comm'n H.R., Press Release No. 55/10, IACHR Concerned About Violence in Jamaica (May 27, 2010).

⁵⁰ *Pedro Pablo Camargo v. Colombia*, Communication No. 45/1979, U.N. Doc. CCPR/C/OP/1 at ¶ 13.1 (1985) [hereafter: *Camargo v. Colombia*].

⁵² *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc E.CN.4/1985/4 (1985); *de Morais v. Angola*, Communication No. 1128/2002, UN Doc. CCPR/C/83/D/1128/2002, ¶ 6.8 (2005).

⁵² *Floresmilo Bolaños v. Ecuador*, Communication No. 238/1987, ¶ 9, U.N. Doc. Supp. No. 40 (A/44/40) at 246 (1989).

⁵³ *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the UN Crime Congress, Sept. 7, 1990, ¶ 9.

⁵⁴ *Ibid*; *Camargo v. Colombia*, *supra* note 51, ¶¶ 13.2, 13.3

⁵⁵ *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the UN Crime Congress, Sept. 7, 1990, ¶ 9 [hereafter: *Principles on the Use of Force*].

⁵⁶ *Camargo v. Colombia*, *supra* note 51, ¶¶ 13.2, 13.3; *Concluding Observations of the Human Rights Committee: Israel*, UN Doc CCPR/CO/78/ISR, ¶ 15 (Aug. 5, 2003), available at:

23. In Jamaica, the circumstances surrounding police killings often do not justify any use of force, especially not lethal force. Witnesses report that it is not the victims but rather the officers who create dangerous situations for both the victims and innocent bystanders.⁵⁸ According to post-mortem reports collected by JFJ, members of the JCF often shoot suspects from behind, or open fire without providing the victims any warning.⁵⁹ They follow victims into private homes and riddle their bodies with bullets.⁶⁰ The JCF often claims that victims are killed during shoot-outs, but testimony from other witnesses strongly disputes these claims.⁶¹ In fact, members of the JCF itself have admitted to intentional and unprovoked killings within the force. In January of 2013, an ex-police officer explained to a newspaper how senior officers order executions of suspects and then have officers plant illegal guns on the bodies in order to corroborate pre-written reports of police shoot-outs.⁶² Other times, the killings involve off-duty officers embroiled in personal disputes or engaging in domestic violence.⁶³ The victims are not the targets of legitimate law enforcement operations, and the force used against them is neither necessary nor proportionate.

24. During Jamaica's 2010 Universal Periodic Review, the Committee expressed concerns about the Tivoli Gardens massacre, a joint military-police operation that left 73 civilians dead.⁶⁴ At the time, Amnesty International observed that "the high number of killings [and] the virtual absence of injuries or fatalities of police officers," combined with witness testimony that residents had not opened fire on the security forces, indicated that many of the killings involved excessive or unlawful use of force.⁶⁵ Although Jamaica agreed during its 2010 UPR to consider appointing an independent commission to investigate the deaths, the State did not even assemble a fact-finding panel until February 2014.⁶⁶ This means the policies and practices that resulted in the Tivoli Gardens killings have been neither investigated nor reformed, suggesting that police continue to act with scant regard for the principles of necessity, proportionality, and legality.

<http://unispal.un.org/UNISPAL.NSF/0/2E5A21A17AEB0C0285256D7F004F4D61> (last accessed Feb. 25, 2014) (observing that all measures to arrest a suspect must be exhausted before resorting to deadly force).

⁵⁷ *Principles on the Use of Force*, *supra* note 56, ¶ 2.

⁵⁸ See e.g., the case of Kevin Dixon. Jamaicans for Justice, *Reform Matters eBrief*, Vol. 1, No. 3, at 2-3 (July-September 2008) (explaining how even though police claimed Kevin Dixon resisted arrest and endangered the officers, witnesses reported that police shot Kevin Dixon in the back as he was running away from them, killing Kevin Dixon and endangering nearby civilians) [hereafter: *Reform Matters Vol. 1, No. 3*] (Annex B5).

⁵⁹ See e.g., *ibid* (explaining that witnesses reported police shot Kevin Dixon in the back as he was running away from them).

⁶⁰ See e.g., the case of Winston Malcolm Jr. and Sr. Rasbet Turner, *St Johns Rd Police Shooting Sparks Demonstration - Man Loses brother and Nephew in Shoot-out*, THE GLEANER (Dec. 22, 2007), <http://jamaica-gleaner.com/gleaner/20071222/news/news1.html> (last accessed Aug. 5, 2014) (explaining how the victims were pulled from their home and executed just outside) [hereafter: *Shooting Sparks Demonstration*].

⁶¹ *IACommHR Report on Human Rights*, *supra* note 11, ¶ 44.

⁶² Cory Robinson, *Death Squads*, THE GLEANER (Jan. 19, 2014), <http://jamaica-gleaner.com/gleaner/20140119/lead/lead1.html> (last accessed Aug. 5, 2014).

⁶³ See e.g., Henry, *Cop Gets Life for Murder*, *supra* note 12 (describing officer who was convicted of murder for killing the mother of two of his children in her home).

⁶⁴ *Universal Periodic Review: Jamaica*, *supra* note 2, at 5.

⁶⁵ Amnesty International, *Jamaica Violence Investigation Must Be Thorough*, Press Release (May 27, 2010), available at: <http://www.amnesty.org/en/news-and-updates/jamaica-violence-investigation-must-be-thorough-2010-05-27> (last accessed Aug. 5, 2014).

⁶⁶ *Universal Periodic Review: Jamaica*, *supra* note 2, at 20. David McFadden, *Jamaica to Investigate Bloody 2010 Security Raid*, THE ASSOCIATED PRESS (Feb. 24, 2014), available at: <http://bigstory.ap.org/article/jamaica-panel-examine-bloody-2010-security-raid> (last accessed Aug. 5, 2014) [hereafter: McFadden, *Jamaica to Investigate*].

25. Despite the astounding number of police killings, Jamaica has only convicted four JCF officers of murder since 1999.⁶⁷ State parties have a duty to investigate and, where appropriate, prosecute those responsible for violations of the right to life.⁶⁸ A failure by a State party to investigate allegations of violations can, in and of itself, give rise to a separate violation.⁶⁹ By failing to ensure that security force-related deaths are independently and thoroughly investigated in order to bring perpetrators to account, Jamaica continues to allow a culture of impunity to reign, and has further failed to fulfill its international obligation to respect the right to life.

26. Finally, the procedural right to life also includes several investigative standards that have been enumerated in the context of the right to a fair trial and judicial protection. These standards and Jamaica's failure to abide by them will be discussed in greater detail in section IV.C below.

B. Right to Humane Treatment

27. The right to humane treatment protects the dignity and the physical and mental integrity of each individual within a State party's jurisdiction, prohibiting torture and cruel, inhuman, and degrading treatment.⁷⁰ Even in situations of public emergency, the right to humane treatment is non-derogable.⁷¹ The right relates to both acts that cause physical pain and acts that cause mental suffering.⁷² States are not in compliance with this obligation simply by outlawing inhumane treatment; they must demonstrate legislative, administrative, judicial, and other measures that prevent and punish acts of cruel, inhuman, and degrading treatment.⁷³ Police officers and other enforcement personnel must receive effective instruction and training regarding the state's duty to humane treatment.⁷⁴

28. The UN Human Rights Committee has found that serious bodily injury, including beatings and stabbings, may constitute inhumane treatment.⁷⁵ Denial of medical treatment further weighs against States accused of such practices.⁷⁶ In 2013, police fatally shot — and thus inflicted serious bodily injury — on 245 people.⁷⁷ In 2013-2014, JFJ also recorded 71 complaints

⁶⁷ *Al Jazeera Turns Spotlight*, *supra* note 9; *IACommHR Report on Human Rights*, *supra* note 11, at 20 (see Table 3). Henry, *Cop Gets Life for Murder*, *supra* note 12.

⁶⁸ *Arhuacos v. Colombia*, Communication No. 612/1995, U.N. GAOR, Hum. Rts. Comm., U.N. Doc. CCPR/C/60/D/612/1995, ¶ 8.8 (1997).

⁶⁹ *Bousroual (on behalf of Saker) v. Algeria*, CCPR/C/86/D/1085/2002 at ¶ 9.12 (March 15, 2006) (quoting General Comment 31).

⁷⁰ Universal Declaration Art. 4, ICCPR Art. 7, American Convention Art. 5. See *HRC General Comment No. 20: Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7)*, OFFICE OF THE HIGH COMMISSION FOR HUMAN RIGHTS, ¶ 2 (44th Session, March 10, 1992), available at: <http://www2.ohchr.org/english/bodies/treaty/comments.htm> (last accessed Feb. 25, 2014) [hereafter: *HRC General Comment 20*].

⁷¹ *HRC General Comment 20*, *supra* note 71, ¶ 3.

⁷² *Id.*, ¶ 5.

⁷³ *Id.*, ¶ 8.

⁷⁴ *Id.*, ¶ 10.

⁷⁵ *Randolph Barrett and Clyde Sutcliffe v. Jamaica*, Communication No. 271/1988, U.N. Doc. CCPR/C/44/D/271/1988 at ¶ 8.6 (1992) [hereafter: *Barrett and Sutcliffe v. Jamaica*].

⁷⁶ *Irvine Reynolds v. Jamaica*, Communication No. 229/1987, U.N. Doc. CCPR/C/41/D/229/1987, ¶ 10.3-10.4 (1991).

⁷⁷ *INDECOM's Statistics 2013*, *supra* note 8, at 1.

of illegal detentions; 8 cases of police beatings; and 10 instances of individuals dying in police custody.⁷⁸

29. The statistics for 2013-2014 are not an anomaly. Jamaican police forces fatally shoot hundreds of victims every year. Reports of potentially unlawful police killings are replete with instances in which victims are shot multiple times and then denied medical treatment, ultimately resulting in their deaths.⁷⁹ In other instances, victims are viciously beaten and then shot.⁸⁰ Still others flee police and are hunted before they are gunned down.⁸¹ These victims are subjected to mental and physical anguish that is prolonged, extreme, or both.⁸² Reports also exist of the JCF treating victims' bodies in a degrading manner, including piling them in the back of police vehicles, often in front of surviving family members.⁸³ Jamaica alleges that this treatment is the unavoidable consequence of extensive gang violence and urban crime, but the State has a duty to protect the right to humane treatment even in the case of emergency.⁸⁴

30. In addition to the physical and mental injury inflicted on the victims, their families suffer mental anguish knowing their relatives died such violent and inhumane deaths. Family members often witness the victims' executions, identify bodies riddled with bullet holes, and learn from witnesses how their relatives were shot in public and then left to die.⁸⁵ Many have faced intimidation by security force officers or have seen witnesses to their family member's deaths disappear due to fear of retaliation from security forces.⁸⁶ The security forces' infliction of this extreme mental suffering on surviving family members constitutes further inhumane treatment in violation of Jamaica's international obligations.

31. Jamaica's failure to properly investigate potentially unlawful police killings and excessive use of force also constitutes a procedural violation of the families' right to humane treatment. State parties have a procedural obligation to investigate not just violations of the right

⁷⁸ Jamaicans for Justice, *Chairpersons Report 2013-2014* at 3 (April 12, 2014), available at: http://jamaicansforjustice.org/download/jamaicans_for_justice/JFJ%20-%20Chairpersons%20report%202013-2014%20final.pdf (last accessed Aug. 3, 2014); Jamaicans for Justice, *Update: IACHR Report on the Situation of Human Rights in Jamaica* at 8 (2012), available at: http://jamaicansforjustice.org/download/human_rights_jamaica/JFJ%20-%20IACHR%20Country%20Report%20Update%20March%202014%20%281%29.pdf (last accessed Aug. 3, 2014) [hereafter: *Update: IACHR Report*].

⁷⁹ JFJ has documented many cases in which the officers involved in the shooting transport the body to a hospital, taking four or five times the normal length of time to arrive. It is suspected that they either wait at the scene or drive the dying victims around until they bleed out so that they may be declared dead upon arrival. *See e.g.*, the case of Kevin Dixon. *Reform Matters Vol. 1, No. 3, supra* note 59, at 2-3 (explaining that Kevin Dixon bled to death when he was left on the ground for more than an hour before being taken to a hospital).

⁸⁰ *See e.g.*, the case of Ian Lloyd. *IACommHR Report on Human Rights, supra* note 11, ¶ 101 (describing how surveillance footage showed Ian Lloyd being beaten with batons and then shot at close range while incapacitated; the post mortem showed that Ian Lloyd had been virtually crippled at the time police shot him).

⁸¹ *See e.g.*, the case of Kevin Dixon. *Reform Matters Vol. 1, No. 3, supra* note 59, at 2-3 (explaining that witnesses reported police shot Kevin Dixon in the back as he was running away from them).

⁸² *See Barrett and Sutcliffe v. Jamaica, supra* note 76, ¶ 3.5 (noting that prolonged and extreme anguish renders treatment cruel, inhuman, and degrading).

⁸³ *See e.g.*, the case of Anthony Nelson (body thrown in the back of a police van along with another man, Ricardo Suckoo; cousin who tried to assist him was pepper sprayed); the cases of Winston Malcolm Sr. and Winston Malcolm Jr. (father and son who were shot in their home and then thrown, in front of female relatives, in the back of a police Jeep). JFJ, *Delays in the Administration of Justice, supra* note 31.

⁸⁴ *HRC General Comment 20, supra* note 71, ¶ 3.

⁸⁵ *See e.g.*, the case of Winston Malcolm Jr. and Sr. *Shooting Sparks Demonstration, supra* note 61 (explaining how a family member reported with tears down his face hearing his brother and nephew shot in cold blood).

⁸⁶ *Update: IACHR Report, supra* note 80, at 4.

to life, but all violations of basic human rights, including humane treatment.⁸⁷ By failing to remedy delays of justice that can last 10 years or more, Jamaica has violated not just its substantive obligation, but also its procedural obligation to protect the families' right to humane treatment.

C. Right to a Fair Trial and Judicial Protection

32. The right to a fair trial includes the right to prompt redress for harm suffered as a result of human rights violations.⁸⁸ Redress consists of “adequate and effective recourse,” which includes investigation, prosecution, and punishment.⁸⁹ Thus, in the context of a violation of the right to life, specifically a deadly shootings involving JCF officers, redress takes the form of prompt and effective criminal investigation, prosecution, and punishment of those responsible.

33. The Human Rights Committee has held that for redress to be “prompt” there cannot be unreasonable prolongation.⁹⁰ In Jamaica, delays of more than 2 years are a normal occurrence in the investigation, prosecution, and judicial proceedings surrounding alleged unlawful police killings and excessive use of force. Each stage is plagued with irregularities, deficiencies, and delays that deprive victims and their families of justice. Although these failings may be more pronounced in some cases and less in others, as a whole they are a major hindrance to the Jamaican justice system.

34. *Delays in investigation.* Delayed inquests are frequently caused by delays in the completion of forensic and ballistic investigations, tests and reports. These delays are the result of a shortage of ballistic experts, forensic pathologists, and forensic analysis. As of 2013, the government employed only four forensic pathologists, whose work is critical to the investigation of cases of unexplained, suspicious, or violent deaths.⁹¹ According to INDECOM, in 2011, 95 percent of incomplete shooting-related cases were awaiting the results of forensic testing. In some cases there had been up to a 2-year delay.⁹²

35. A glaring example of delay in investigation is the long-awaited investigation into the

⁸⁷ *Coronel v. Colombia*, Communication No. 778/1997, U.N. GAOR, Hum. Rts. Comm., U.N. Doc. CCPR/C/76/D/778/1998, ¶ 6.2 (2002) (holding that States must provide sufficient and effective investigations and judicial proceedings of particularly serious violations “as in the case with violations of basic human rights”) [hereafter: *Coronel v. Colombia*]. See also *Banda v. Sri Lanka*, Communication No. 1426/2005, U.N. GAOR, Hum. Rts. Comm., U.N. Doc. CCPR/C/91/D/1426/2005, ¶ 7.4 (2007) (holding that unduly prolongation and ineffective of proceedings against the perpetrators of serious physical assault were in violation of ICCPR Art. 7).

⁸⁸ Both the right to a fair trial and right to judicial protection are contained in the same article under the Universal Declaration and ICCPR (Art. 10 and Art 14, respectively), but that they are divided into two in the American Convention (Arts. 8 and 25). They are discussed here together because the remedies required of each are similar.

⁸⁹ See *Coronel v. Colombia*, *supra* note 89; *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UNGA Resolution 60/147 of Dec. 16, 2005, ¶¶ 3b, 4 (available at: http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf, last accessed Feb. 25, 2014) [hereafter: *Basic Principles on the Right to a Remedy*].

⁹⁰ *Rajapakse v. Sri Lanka*, Communication No. 1250/2004, U.N. Doc. CCPR/C/87/D/1250/2004, ¶ 6.2 (2006) (noting that 3 years of delays since the violatory incident constitutes unreasonable delays sufficient to remove the requirement of exhaustion of domestic remedies); *Henry v. Jamaica*, Communication No. 230/1987, U.N. Doc. CCPR/C/43/D/230/1987, ¶ 7.5 (1991) (holding that the alleged victim had already suffered 2 years of delays, so any further delays would constitute unreasonable prolongation).

⁹¹ *Reform Matters Vol. 2, No. 1*, *supra* note 20, at 3.

⁹² INDECOM, *Confronting the Challenges*, *supra* note 14, ¶ 2.22.

Tivoli Garden killings.⁹³ Despite taking place in mid-2010, the State did not even announce the appointment of an impartial investigatory panel until February 24, 2014, nearly 4 years after the killings took place. Although a lead commissioner has been appointed, as of late February, Jamaica had not even announced when the panel would convene.⁹⁴

36. *Delays in prosecution.* Cases also get held up awaiting a decision from the DPP on whether to press charges against officers involved in fatal shootings. In 2010, it took the DPP 27 months on average to decide whether to bring charges against JCF members suspected of unlawful killings.⁹⁵ Delays of up to 6 years have been reported, and as of 2013, cases referred to the DPP as far back as 2009 were still awaiting rulings.⁹⁶ This problem may be alleviated for future killings by a Supreme Court ruling that INDECOM has the power to press charges when the Commissioner concludes that charges should be laid against JCF members.⁹⁷ This, however, does not resolve the issue of delay for cases referred to the DPP before the creation of INDECOM and still awaiting rulings, making it unlikely that DPP will decide to prosecute.

37. *Delays in judicial proceedings.* Finally, cases of alleged unlawful police killings stall before the Coroner's Court and the Supreme Court. In 2008, the Coroner's Court had an island-wide backlog of 4,000 cases.⁹⁸ The creation and appointment of a Special Coroner in 2013 to hold inquests into police-related killings has done little to resolve the delays stemming from the court system. These systematic delays have resulted in backlogs that are mathematically impossible to resolve. As noted above, in March 2013, the Special Coroner had a backlog of 300 cases and a caseload that was growing by 60 to 80 cases each year. Given that the Special Coroner only has enough resources to resolve about 60 cases per year, it can barely complete inquests into the new cases it receives, with no realistic possibility of resolving the backlog.⁹⁹

38. Even cases that do finally make it to the Supreme Court likewise stall for years before the court produces a final ruling.¹⁰⁰ The Supreme Court has a backlog of almost 500 cases due to infrequent sittings, inadequate juror availability, witness intimidation and absenteeism, and inadequate staffing and resources.¹⁰¹ Ultimately, it still takes more than 5 years on average for the courts to resolve cases involving death at the hands of agents of the State.¹⁰² These delays constitute unreasonable prolongation of redress.

39. *Judicial protection.* The right to judicial protection further provides that investigation, prosecution, and punishment must be not only prompt, but also effective.¹⁰³ In cases of alleged

⁹³ McFadden, *Jamaica to Investigate*, *supra* note 67.

⁹⁴ *Id.*

⁹⁵ INDECOM, *Confronting the Challenges*, *supra* note 14, ¶ 2.13.

⁹⁶ See e.g., the case of Omar Evans (referred to the DPP in 2003; no ruling until 2009). See also the cases of Paul Wallace, Anthony Nelson, and Jevaghn Robinson. JFJ, *Delays in the Administration of Justice*, *supra* note 31.

⁹⁷ *The Police Federation v. INDECOM*, Supreme Court of Judicature of Jamaica, Claim No. 2011 HCV 06165, ¶ 107 (July 30, 2013) (Annex B7).

⁹⁸ IACommHR Report on Human Rights, *supra* note 11 ¶ 142 (citing statistics from 2008).

⁹⁹ *Special Coroner Asked*, *supra* note 36.

¹⁰⁰ See e.g., the case of Paul Richard Brown (fatally shot by an off-duty police officer in 2009; no Supreme Court hearing as of February 2014); the cases of Kemar Walters and Oliver Duncan (delay of 8 years before the case went to trial, during 4 of which the key witness was too scared to tell the truth); Troy Gordon (trial commenced in October 2010 and had not been completed as of February 2014). JFJ, *Delays in the Administration of Justice*, *supra* note 31.

¹⁰¹ Gayle, *Missing Jurors*, *supra* note 39; Gayle, *Shortage of Judges*, *supra* note 39; *Supreme Court to Get Additional Staff*, *supra* note 39; *Backlog of Court Cases*, *supra* note 39.

¹⁰² *Special Coroner Asked*, *supra* note 36.

¹⁰³ ICCPR Art. 14, IACHR Art. 25; *Basic Principles on the Right to a Remedy*, *supra* note 91, ¶¶ 3b., 4.

extrajudicial killings, international standards for effectiveness require an independent and unbiased investigation performed by an investigative body endowed with the power it needs to obtain all information required for an effective inquiry.¹⁰⁴ This includes removing implicated parties from the investigation and proceedings.¹⁰⁵ Parties overseeing the inquests must also have adequate budgetary and technical resources needed to perform a thorough inquiry.¹⁰⁶

40. Jamaica took a crucial first step in creating an independent commission (INDECOM) to investigate cases involving police fatalities and excessive use of force. Previously, a clear conflict of interest arose during investigations of unlawful police killings because Jamaica's other investigative agency, the BSI, is organized as a specialized unit of the JCF.¹⁰⁷ This meant that the police force was essentially investigating itself, and the agency consistently demonstrated bias in favor of the JCF.¹⁰⁸ Nonetheless, even with the creation of INDECOM, investigations fall below international standards for independence and overall effectiveness.

41. *Independent and unbiased.* The Human Rights Committee has stated, "Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations."¹⁰⁹ Autopsy physicians must also function independently of any potentially implicated persons or organizations.¹¹⁰

42. Jamaica fails in several ways to remove the "implicated party" (i.e. the JCF) from investigations of its own officers potentially involved in unlawful killings. First, despite the fact that INDECOM is supposed to oversee the investigations, JCF officers typically give orders for the medical practitioner to perform the post mortem, which is a conflict of interest when an officer is involved in the death.¹¹¹ Second, the JCF's Forensic Division processes most of INDECOM's crime scene evidence. As a sub-department of the JCF, the Forensics Division budget is determined by the JCF Commissioner.¹¹² INDECOM is therefore beholden to JCF and its budget appropriations for processing of evidence. Third, INDECOM depends heavily on the JCF for conducting identification parades.¹¹³ Fourth, JCF officers act as bailiffs, and summon witnesses and jurors in Coroner's Court cases.¹¹⁴ Fifth, officers are allowed to coordinate with their peers and supervisors before giving statements to INDECOM. As explained previously, the JCF maintains that its officers have a "right" to discuss police-related killings before providing

¹⁰⁴ Economic and Social Council Resolution 1989/65: Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, ¶ 10-11 (May 24, 1989) [hereafter: *Principles on Prevention and Investigation of Extra-legal Executions*].

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ The JCF, one of the police forces of Jamaica, is the principal State agency tasked by the Government with the maintenance of law and order within Jamaica's boundaries. *About Us*, JAMAICA CONSTABULARY FORCE, <http://www.jcf.gov.jm/about-us> (last visited Jan. 26, 2014). Per capita killings by the JCF are among the highest in the world. U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2011 (Jamaica)*, available at: <http://www.state.gov/documents/organization/186737.pdf> (last accessed Jan. 16, 2014).

¹⁰⁸ *ACommHR Report on Human Rights*, *supra* note 11, ¶ 101.

¹⁰⁹ *Principles on Prevention and Investigation of Extra-legal Executions*, *supra* note 106, ¶ 15.

¹¹⁰ *Id.*, ¶ 14.

¹¹¹ *Reform Matters Vol. 2, No. 1*, *supra* note 20, at 3.

¹¹² Interview with Dr. Judith Mowatt, Director, JCF Forensics Division (Kingston, Jamaica, Dec. 4, 2013).

¹¹³ *Safeguarding the Right to Life*, *supra* note 40, at 5.

¹¹⁴ *Reform Matters Vol. 1, No. 4*, *supra* note 20, at 6. The amended Coroner's Act gives the Coroner the power to appoint a special bailiff to summon witnesses, but Jamaicans for Justice reported in 2009 that this never happens. *Reform Matters Vol. 2, No. 1*, *supra* note 20, at 3.

evidentiary statements to INDECOM, thereby allowing other officers to interfere with the investigation.¹¹⁵ This practice permits collusion and discourages whistle blowing within the JCF.

43. Not only is INDECOM reliant upon the JCF for investigatory support, the very officers implicated in the killings return to full duty at the JCF within a few days of each incident, instead of being taken off the streets while internal reviews are pending.¹¹⁶ In one case, an officer who killed a civilian was promoted before the internal investigation was completed, despite INDECOM noting that there were “troubling issues concerning the shooting.”¹¹⁷ Unsurprisingly, issues of evidence tampering, mishandling, and misplacement continue.¹¹⁸ Jamaica’s failure to institute reforms that would remove interested parties, namely the JCF, from participating in these various aspects of the investigations — such as giving orders to medical practitioners conducting the post mortems, summoning witnesses, and acting as bailiffs — has resulted in the failure to comply with its duty to provide domestic legal effects to victims of unlawful police killings.

44. *Sufficient power to investigate.* Although the Supreme Court has resolved most of INDECOM’s jurisdictional issues on paper, in practice the JCF and DPP continue to challenge INDECOM’s authority and competence. When seeking access to JCF records, INDECOM investigators have been told they need warrants from a Justice of the Peace, that they should call ahead before inspecting, and that for each request the relevant security force must first seek the advice of the Defence Board or the Solicitor General, even though INDECOM has express authority to access records independently.¹¹⁹

45. Further, as noted earlier, while less frequent, it is still common for JCF officers to process crime scenes before calling INDECOM, or to wait an hour or two instead of immediately informing INDECOM that a fatal shooting has taken place.¹²⁰ This happens when the potential unlawful police killing occurs in conjunction with investigation of another crime, such as a robbery. Since JCF is processing the original crime scene, it has an opportunity to tamper with the evidence surrounding the unlawful police killing. INDECOM has implemented rigorous investigation procedures, but its late arrival at the crime scene results, through no fault of its own, in: loss of vital evidence, including from eyewitnesses; failure to preserve the crime scene, sometimes by prematurely moving the bodies; failure to collect evidence, including sample swabs, clothing, or statements from material or eyewitnesses; failure to conduct adequate and complete autopsies; inadequate and questionable analysis of samples collected; and failure to protect vital evidence, resulting in it being lost or destroyed prior to trial.¹²¹ The JCF maintains that it must move injured persons to receive medical care in virtue of the right to life, and that it is not qualified to pronounce someone dead at the scene of the crime. However, witnesses

¹¹⁵ *Safeguarding the Right to Life*, *supra* note 40, at 4-5.

¹¹⁶ *Id.* at 7.

¹¹⁷ *Id.* at 8.

¹¹⁸ *INDECOM, Confronting the Challenges*, *supra* note 14, ¶ 2.44.

¹¹⁹ *Id.*, ¶ 2.27; INDECOM Act § 20 (2010).

¹²⁰ This is particularly true in St. Catherine South and St. Thomas where the highest number of police-involved killings occur. Interview with INDECOM Commissioner Terrence Williams (Kingston, Jamaica, Dec. 5, 2013).

¹²¹ Amnesty Int’l., *Let Them Kill Each Other*, *supra* note 15, at 9. See also JFJ, *NGO Report on Implementation of ICCPR*, *supra* note 10, ¶ 8 (“The UN Special Rapporteur states that the BSI suffers from some serious inadequacies of investigations into police shootings due to the failure of officers to preserve scenes of violence or crime which destroys valuable evidence”) (internal quotations omitted).

consistently report that bodies are tossed haphazardly in the backs of trucks, and that victims take a suspiciously long time to arrive at the hospital.¹²²

46. *Adequate resources.* The Human Rights Committee has “deplored that the lack of human and material resources is an aspect which may undermine the independence of the judiciary.”¹²³ As previously explained, delays to inquests are frequently caused by delays in the completion of forensic and ballistic investigations, tests, and reports. These delays are the result of a significant shortage of ballistic experts, forensic pathologists, and forensics analysts, whose results are critical to the investigation of cases of unexplained, suspicious, or violent death.¹²⁴ The problem is exacerbated by the fact that under Jamaican law, only the Commissioner of Police can qualify an analyst as a ballistics “expert,” and has refused to certify INDECOM’s experts as such.

47. Jamaica’s court systems, including the Coroner’s Court and the Supreme Court, are also understaffed.¹²⁵ Although the Coroner’s Act provides for the appointment of Assistant Special Coroners, none have been appointed.¹²⁶ Further, since the Special Coroner is a single, itinerant Coroner, he must schedule sittings in each parish. In attempting to attend to each parish during the year, he only has time to sit in some parishes once each year for a period of 5 days per sitting.¹²⁷ This significantly hurts the continuation of Court matters because there can be a delay of up to 10 months in between the taking of evidence in the same case. In the Supreme Court, inadequate staffing and resources, including a shortage of judges trying to manage a high caseload, contribute to delays.¹²⁸

48. By failing to provide sufficient resources to INDECOM to hire technicians to run tests and experts to interpret results, and by failing to provide sufficient staff to the court systems, Jamaica has not fulfilled its obligation to provide adequate human resources to ensure effective recourse.

V. CONCLUSION AND RECOMMENDATIONS

49. Jamaica has an affirmative obligation to ensure that its domestic legal system is structured in such a way as to give effect to those rights that it has committed to protect under international law. This includes providing appropriate means of redress and remedies to any aggrieved individual or group.¹²⁹ This also means that appropriate means of ensuring

¹²² See e.g., the case of Anthony Nelson (body thrown in the back of a police van along with another man, Ricardo Suckoo). JFJ, *Delays in the Administration of Justice*, supra note 31.

¹²³ Report of the UN Special Rapporteur on the Independence of Judges and Lawyers: Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, A/HRC/11/41, ¶ 77 (March 24, 2009).

¹²⁴ *Reform Matters Vol. 2, No. 1*, supra note 20, at 3.; *Reform Matters Vol. 1, No. 4*, supra note 20, at 2.

¹²⁵ Some blame the lack of staff on the “uncompetitive salary package.” See Alicia Dunkley, *Chief Justice Laments Delay in Appointment of Special Coroner*, JAMAICA OBSERVER (January 6, 2011) available at: http://www.jamaicaobserver.com/news/Chief-justice-laments-delay-in-appointment-of-Special-Coroner_8270421 (last accessed Aug. 5, 2014).

¹²⁶ *Id.*

¹²⁷ Interview, Camille Lee, Senior Attorney, Jamaicans for Justice (Dec. 1, 2013, Electronic interview).

¹²⁸ JFJ, *NGO Report on Implementation of ICCPR*, supra note 10, ¶ 19.

¹²⁹ *General Comment No. 9: The Domestic Application of the Covenant*, Document No. E/C.12/1998/24, ¶ 2 (Dec. 3, 1998), available at: <http://www1.umn.edu/humanrts/gencomm/escgencom9.htm> (last accessed Feb. 25, 2014). Although this comment was made in relation to the Covenant on Economic, Social and Cultural Rights, the CESCR’s principle of domestic legal effects is consistent with that of the ICCPR.

governmental accountability must be put in place,¹³⁰ and States cannot depend on legislative enactments as *per se* sufficient implementation of civil and political rights.¹³¹ Although Jamaica has implemented reforms since its 2010 UPR — most notably establishing INDECOM and the Special Coroner’s Court to investigate police-involved deaths — these reforms remain insufficient to address the widespread human rights violations that continue to take place nationwide.

50. The authors of the present report urge the Human Rights Council to pressure Jamaica to take the steps necessary to make INDECOM and the Special Coroner effective, as they have the potential to contribute to the eradication of impunity in cases of extrajudicial, arbitrary, and unlawful killings. We further urge the Council to ask Jamaica to enact all other changes necessary to give domestic effect to the rights to life, humane treatment, fair trial, and judicial protection as related to the issues raised in this report.

51. More specifically, we urge the Human Rights Council to recommend that Jamaica:

1. Adopt such legislative or other measures, such as procedural protocols, as may be necessary to ensure that police and security officers exhaust all other options before resorting to force, especially deadly force, including non-lethal suppression equipment;

2. Ensure accountability for unlawful use of force and extrajudicial killings, including diligent criminal investigation, prosecution, and punishment of perpetrators;

3. Adopt such legislative or other measures as may be necessary to remove officers involved in killings from active duty, including discharging them of their weapons, during investigations;

4. Amend police procedures to prevent officers from coordinating their witness statements in connection with alleged unlawful killings and excessive use of force;

5. Restructure investigations and court administration so the governmental body being investigated, the JCF, plays no part in the initial investigation or in Coroner’s Court or Supreme Court proceedings;

6. Amend the INDECOM Act to resolve the jurisdictional battle and lack of legitimacy INDECOM faces before other branches of government, i.e. ensuring the DPP does not intervene in INDECOM’s prosecutions;

7. Give INDECOM the power it needs to investigate JCF officers and introduce their statements into evidence,

8. Amend the Firearms Act so the Commissioner of Police is not required to certify INDECOM’s ballistics experts;

9. Adopt such legislative or other measures as may be necessary to rein in the unfettered discretion enjoyed by the Office of the Director of Public Prosecution;

10. Provide INDECOM with the necessary resources to meaningfully carry out its function as an independent commission with the aim of ensuring thorough, effective, and timely investigation into killings involving security forces, including eliminating its reliance on JCF for: ordering post mortems; processing, testing, and analyzing crime scene evidence; conducting identification parades; and summoning witnesses and jurors;

¹³⁰ *Id.*

¹³¹ *HRC General Comment No. 03: Implementation at the National Level (Art. 2)*, (13th Session, July 29, 1981), available at: <http://www2.ohchr.org/english/bodies/treaty/comments.htm> (last accessed Aug. 5, 2014).

11. Conduct a parliamentary review of the Special Coroner’s Court and Coroner’s Court in Jamaica in a bid to revamp the Coroner’s Court to allow it to obtain its original investigatory objective and to minimize unnecessary delays;

12. Increase resources and personnel so the Coroner’s Court and Supreme Court have sufficient human and material resources to comply with international standards of independence of the judiciary.

ANNEXES

Annex A. Coalition of Stakeholders

- a. Non-Governmental Organizations
- b. Academics

Annex B. Documents

Note: Only documents for which we could not provide a place where they can be easily found online has been annexed. For all other documents referred to in this report, see the url specified in the relevant footnote.

1. Jamaicans For Justice & The George Washington University Law School International Human Rights Clinic, *Killing Impunity: Fatal Police Shootings and Extrajudicial Executions in Jamaica: 2005-2007* (Mar. 18, 2008) (submitted to the Inter-Am. Comm'n H.R. on Mar. 20, 2008).
2. Jamaicans for Justice, *Reform Matters eBrief*, Vol. 2, No. 1 (January-March 2009).
3. Jamaicans for Justice, *Reform Matters eBrief*, Vol. 1, No. 4 (October-December 2008).
4. Jamaicans for Justice, *Delays in the Administration of Justice* (Dec. 2012).
5. Jamaicans for Justice, *Reform Matters eBrief*, Vol. 1, No. 3 (July-September 2008).
6. Amnesty International, *Public Security Reforms and Human Rights in Jamaica*, AMR 38/001/2009, at 12 (2009).
7. *The Police Federation v. INDECOM*, Supreme Court of Judicature of Jamaica, Claim No. 2011 HCV 06165 (July 30, 2013).