



Joint Civil Society Submission to the United Nations Human Rights Council on the Third Cycle of the Universal Periodic Review for Jamaica

Submitted by: Joint Civil Society Coalition – Jamaicans for Justice (JFJ), The Caribbean Vulnerable Communities Coalition (CVC), The Jamaica Youth Advocacy Network (JYAN), Jamaica Network of Seropositives (JN+)

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About the Coalition

The Coalition consists of Jamaicans for Justice (JFJ), Caribbean Vulnerable Communities (CVC), Jamaica Network of Seropositives (JN+), Jamaica Youth Advocacy Network (JYAN). *See Annex A – About the Coalition for organization information.*

Introduction

Jamaicans for Justice, Caribbean Vulnerable Communities Coalition, Jamaica Network of Seropositives and the Jamaica Youth Advocacy Network appreciate this opportunity to contribute to Jamaica's third review cycle of the Universal Periodic Review (UPR). This submission examines a range of human rights priorities since Jamaica's last UPR in May 2015. In the second cycle of the UPR, Jamaica received 170 recommendations in the area of human rights, of which 94 recommendations were accepted and 76 noted.

Jamaica's human rights situation should be guided by the accepted UPR recommendations, in addition to the various international human rights treaties Jamaica has signed and/or ratified.¹

Since 2015, Jamaica continues to face a range of human rights challenges, primarily longstanding shortcomings in fulfilling the obligations imposed by the various conventions and treaties to which it is party. Despite some decisive progress at the policy level, the effective and sustainable realization of rights remains elusive. Attention to the pervasive implementation deficits is critical to translate commitments into action. The extent of rights compliance must be measured by the situation on the ground, as detailed below, and not the mere proclamation of policy positions.

I. National Human Rights Institution (NHRI)

The establishment of an NHRI was recommended eight times during the second cycle of its UPR in 2015 – all of which the State accepted but has not implemented.⁷ Despite periodic conversations and political commitments, Jamaica has yet to establish a National Human Rights Institution with a broad, explicit mandate to promote and protect human rights, in accordance with the Paris Principles. Jamaica lacks an institution that sufficiently fulfils this mandate, which leave important gaps in Jamaica's rights protection infrastructure.

These gaps undermine the fulfilment of its obligations under international conventions, such as Article 2 of the ICCPR which requires States to take "necessary steps to...give effect to the rights recognized in the present Covenant." The establishment of a competent administrative mechanisms such as an NHRI is a necessary step for attending to the deficiencies in Jamaica's abilities to address claims of rights violations under domestic law and upholding the general obligation to investigate allegations of violations promptly.

¹ Jamaica has signed and ratified the following international human rights documents; Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography; Convention on the Rights of Persons with Disabilities

The void of not having a NHRI and consequent failure by the State to investigate allegations of violations can in and of itself be considered a breach of human rights obligations.²

See Annex B - Progress towards a Jamaican Human Rights Institution.

RECOMMENDATIONS

1. The State must develop and communicate its plan to establish an independent national human rights institution in line with the principles relating to the Paris Principles.

II. Submission of Periodic Reports

When it comes to preparing and regularly submitting periodic reports concerning international conventions, to which Jamaica is a party, the State could benefit from the employment of a permanent institutionalized mechanism or body to coordinate government engagement with the international and regional human rights mechanisms. This body exists to a certain extent, as an inter-ministerial committee – or similar variation – spearheaded by the Ministry of Foreign Affairs and Foreign Trade with general aims of coordinating reporting in some fashion. Nevertheless, it is neither permanent nor sufficiently institutionalized in the operations of government to adequately carry out recommendations and reporting. Without central coordination, important recommendations go unfulfilled, and reports are submitted well beyond due dates. The state must understand the value of such mechanisms to sustaining a human rights agenda with respect to international standards.

RECOMMENDATIONS

1. Establish a permanent governmental mechanism tasked with coordinating government engagement human rights mechanisms and implementing recommendations, in consultation with civil society would substantially improve Jamaica’s adherence to human rights.

III. Anti-Discrimination Framework

Discrimination is not comprehensively defined within Jamaica’s existing legal framework.

The 2011 Charter of Fundamental Rights and Freedoms (the Charter) is a milestone for the protection of human rights in Jamaica. Nevertheless, the Charter does not adequately protect against discrimination on the basis of gender, sexual orientation, gender identity, health status, disability or marital status. While the Charter guarantees equality before the law, it enables continued direct and indirect discrimination and offers little redress for such discrimination.

Limited Protection from Discrimination

While we appreciate the advancements of the 2011 Charter, we acknowledge that there is room for further enhancement. The Charter fails to address discrimination on the basis of age, sex¹⁹, gender²⁰, sexual orientation, gender identity, language, health status, marital status, disability, birth status or other status, and has only one section which is applicable to non-State actors. Furthermore, the rights guaranteed by the Charter are constricted by the savings law clauses. Outside of the Charter, there are no comprehensive anti-discrimination laws or correspondent complaint mechanisms. The failure to prohibit discrimination broadly is a violation of the State’s obligation under article 26 of the ICCPR, to “prohibit

² United Nations Human Rights Committee (2004), *General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add, para 15

any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”

For more information, see Annex C - Anti-Discrimination Framework.

RECOMMENDATIONS

1. All appropriate measures should be taken to adequately protect and promote the human rights of all persons, through amendments to the Charter of Fundamental Rights and Freedoms, to guarantee the right to non-discrimination [found in section 13(3)(i)], to protect against all forms of discrimination by both state and non-state actors; and to repeal those clauses which unduly limit the human rights of its citizens, including but not limited to, the savings law clause in sections 13(7), (8) and (12).

IV. Persons with Disabilities (PWDs)

The Disabilities Act was enacted in 2014, a foundational step taken by the State to guarantee equality to persons with disabilities and to protect them from discrimination. In an effort to empower self-advocacy, persons with disabilities have been included on government boards and committees. Five years later, the Disabilities Act is not in force, the commencement date has not been pronounced and Jamaica is yet to fully implement a sustained programme of protection for people living with disabilities. Basic rights of access and equal protection are routinely violated and many persons with disabilities remain unaware of how the Act will protect them. The lack of resolute action towards resolving these issues or enforcing the Disabilities Act serves as a violation of articles 2 and 26 of the International Covenant on Civil and Political Rights, the Convention on the Rights of Persons with Disabilities, among other human rights commitments.

For more information about the (lack of) inclusion of persons with disabilities in Annex D – Inclusion of PWDs.

RECOMMENDATIONS

1. The state should legislate special protective measures and secure their meaningful implementation in order to comply with the international standards and better protect the rights of persons with disabilities.
2. Infrastructure should be improved through the adoption and implementation of building codes as well as policies and practices to be more inclusive of the realities of persons with disabilities.
3. The commencement of the Disabilities Act, with all provisions and regulations is long overdue and must take effect immediately.
4. Awareness around the Disabilities Act and sensitization of the general public about the rights of persons with disabilities is needed.
5. Data collection mechanisms should be employed to measure progress on the treatment of persons with disabilities in various settings, including schools, prisons and remand centres.

V. The LGBTI+ Community

Although some progress has been made with regards to tolerance of the LGBTI+ community within the Jamaican society, this community continues to face severe challenges, inclusive of legal barriers, to the equal protection of their human rights. LGBT Jamaicans fight to exist within a legal context that enables violations of their human rights and their exclusion from the larger society. Discriminatory attitudes and

practices towards members of the LGBTI+ community are widespread and reinforced by the existing legal framework.

Gaps in Recognition & Protection

The state's legislation has not yet been amended to prohibit discrimination on the basis of sex, sexual orientation and gender identity; sexual relations between consenting adults of the same sex have not been decriminalized.

To read more on the discrimination that persists due to gaps in recognition and protection, see Annex E – LGBT+ Stigma, Discrimination and Violence.

RECOMMENDATIONS

1. The State must take all necessary steps to safeguard the rights, dignity and access to justice for LGBT Jamaicans. These steps should include enacting comprehensive anti-discrimination legislation to prohibit all forms of discrimination, to define indirect and direct forms of discrimination, in public and private settings, by public and private agents, inclusive of discrimination on the basis of sexual orientation and gender identity.
2. Amendments must be made to laws which exclude, fail to equally protect and/or discriminate against LGBT persons.
3. Public education campaigns should be used to encourage of a culture of respect for all, particularly vulnerable and marginalized groups such as LGBT persons.
4. The state is responsible for removing all legal and policy barriers which prevent LGBT Jamaicans from fully participating on an equal footing with cisgender heterosexual Jamaicans.

VI. People Living with HIV (PLHIV)

Discrimination against people living with HIV/AIDS persists in Jamaica, largely due to the absence of any meaningful legal protection. Despite some commendable policy steps, the state continues to violate Articles 2 and 26 of the ICCPR by failing to prohibit discrimination on the grounds of health status or assuring equal treatment in various spheres of public life. As described in section 13³⁹, Jamaica's constitutional provisions exclude "health status" from its anti-discrimination provisions, and Jamaica has no comprehensive anti-discrimination legislation.

Accordingly, the nascent protection efforts embodied in the *National HIV/AIDS Workplace Policy* and the *National HIV-Related Discrimination Reporting and Redress System* have not been meaningfully implemented and lack any real accountability structures. Without a comprehensive HIV and AIDS law, an anti-discrimination law or human rights act/commission to legally enforce non-discrimination, existing and future HIV and AIDS policies and strategic plans will not have the desired result of ensuring equal access to prevention, care, treatment, and support by key populations, as well as the full enjoyment of PLHIV in all aspects of social, cultural, civil, and political life.⁴⁰

The Joint Select Committee appointed to complete the review of the Sexual Offences Act along with the Offences Against the Person Act, The Domestic Violence Act and the Child Care and Protection Act, in its Report released in late 2018, made a recommendation for an amendment to the Offences against the Person Act (OAPA) to make it a criminal offence for an individual to "wilfully or recklessly infect a partner with any sexual transmissible disease that can inflict serious bodily harm to that partner". The JSC notably cited HIV as an example in its statements.

This recommendation, if passed as law, will severely impact the rights and dignity of persons living with HIV and is a regressive move that goes against a human rights-based approach to tackling the Jamaican HIV epidemic and engaging and supporting the community of people living with HIV.

For additional information on the situation of people living with HIV and Discrimination against PLHIV, see Annex F – HIV related Stigma and Discrimination

RECOMMENDATIONS

1. Initiate and dedicate resources to programmes and initiatives to create a more enabling environment and promote human rights with a specific focus on addressing stigma and discrimination.
2. The State should continue to engage in partnerships with key population organisations such as J-FLAG and with other entities, to strengthen the national HIV/AIDS response for system change with regards to law and policy.
3. Establish, in legislation, protection from discrimination based on health status, including HIV/Status, accompanied by a robust enforcement and redress mechanism is essential to the betterment of the lives of PLHIV.
4. The National HIV/AIDS Workplace Policy can be strengthened with the force of law for which formal redress for breaches can be provided and promoted via national awareness-raising efforts.
5. Similarly the National HIV Reporting and Redress System should be given an institutional home, sufficient human resources, and heightened technical capacity.
6. Resources, both human and financial, must be dedicated to initiatives to address stigma and discrimination.
7. Parliament must reject recommendations made by the Joint Select Committee of Parliament which recommend the creation of a law that criminalises wilful and reckless transmission, and refrain from enacting legislation that will fuel the stigmatisation of and discrimination against PLHIV.

VII. Gender Discrimination

Private notions acknowledging the need to address systemic gender inequalities alongside the draft of the Sexual Harassment Bill and the review of the Sexual Offences Act demonstrate that the Government is slowly taking steps in the right direction towards dealing with gender inequality. However, the Government has failed to implement, in a meaningful way, strategies to remove different structural barriers to women's participation in decision-making and to gender equality.

Despite expressed commitments to deal with the social, economic and political inequality between men and women in Jamaican society, there has been little progress made on a societal level to address these fundamental inequalities. This is further exacerbated by a weak, ineffective, national machinery commencing with the Bureau of women's/gender affairs.

The government has amended the Constitution to prohibit discrimination on the basis of being male or female in section 13(3)(i), however the impact of this amendment is yet to be felt. It is unclear to what degree private companies and other non-State actors can be held accountable to this provision.

Women's Participation in Decision-Making

A review and monitoring of both private sector and public sector leadership indicates that between 2008 and 2016, male domination has prevailed in the private sector and there has been minimal to no significant upward change in the overall average sex composition of the private sector boards on the 'Watch List' since 2008. For the public sector, the percentage of female members has continued to hover under 40% with an average of 35% of the appointees being female, in 2008 and 2016.

The current percentage of women in Parliament is at its historic highest –17.5% in the lower house and 23.8% in the upper house, 20.65% overall. The current percentage of women in the executive arm of government is 23%.

Violence Against Women

Regrettably, incidents of rape and domestic violence against women are prevalent in the State party.³ While there have been political commitments, there are still no shelters in place for victims of domestic violence. The State must strengthen its efforts to combat gender-based violence and to ensure that cases are dealt with in an appropriate and systematic manner by, inter alia, investigating, prosecuting and punishing the perpetrators. Staff in the Victim Support Unit and the Jamaica Constabulary Force are in need of training on violence against women, including sexual abuse and domestic violence.

The legislation which addresses violence against women remains inadequate and there is a clear need for policies and infrastructure to respond to violence against women and girls.

The Sexual Offences Act, Domestic Violence Act and Sexual Harassment Bill create the legislative framework which seeks to capture violence meted out against women in Jamaica. The Sexual Offences Act provides limited protection to women who experience sexual violence, the Domestic Violence Act provides some protection against physical and mental injury caused by intimate partners and family members and the Sexual Harassment Bill seeks to protect women (and men) from unwanted sexual advances, request for sexual favours and crude sexual behaviour. The Government has indicated that steps will be taken to amend and supplement these laws and policies however they remain unaddressed.

For more information about gender inequality and gender-based violence, see Annex G – Gender Discrimination.

RECOMMENDATIONS

1. The State must move expeditiously to address gender inequality in its various forms by enacting comprehensive anti-discrimination legislation to prohibit discrimination on the basis of sex and gender
2. The State must provide a legislative and regulatory framework to protect women from gender based violence
3. The State must work to increase the representation of women in Parliament, the Cabinet and public boards.
4. Legislation should be enacted to uphold women's economic equality

³ November 2011 Human Rights Concluding Observations

5. The State should conduct gender sensitization campaigns to build an awareness of the importance of gender equality.

VIII. Sexual & Reproductive Rights, Maternal Mortality and Abortion

Since the last UPR session, Jamaica has not made any notable progress in relation to sexual and reproductive rights, maternal mortality or abortion. Risks of maternal mortality and the provision of safe legal abortions directly impact the health, well-being and human rights of women and girls in Jamaica. Sexual and reproductive health and globally recognized aspects of the right to health. As a part of complete health and gender equality, there should be sustained efforts to have legislatively backed, state run programs and initiatives focusing on sexual and reproductive health and rights of women and girls.

The State has made minimal effort towards the development of laws or policies which address sexual and reproductive health and rights and has continued to exercise the savings clause contained within its Constitution to preserve anti-abortion legislation.

12 years have elapsed since the Abortion Policy Review Advisory Group Final Report and the state has failed to act on any of the recommendations presented in the report. In 2019 a Joint Select Committee was formed to review the Abortion Act. Representative from civil society entities and religious groups made submissions on the issue. The Committee's report of that review is pending. There has been an obvious reluctance to update the relevant data or create policy guidelines to protect health care professionals which is indicative of a lack of political will to legalize abortion.

For more on the sexual and reproductive health of girls and women, see Annex H –Women's and Girls' Sexual and Reproductive Health.

RECOMMENDATIONS

1. A Sexual and Reproductive Health law must be in place to ensure adequate protection, guidance and opportunities for redress for sexual and reproductive health issues which are faced by all persons, including women and girls. Furthermore this law must work in conjunction with HIV/AIDS and anti-discriminatory laws for a full-bodied effect which empowers persons to safely and comfortably access sexual and reproductive information, services and commodities.
2. High rates of maternal mortality and morbidity stem from botched illegal abortions. It is critical that the State take steps to decriminalise abortion and to ensure that women who are faced with unwanted pregnancies do not resort to illegal abortions that could put their lives at risk.

IX. States of Emergency, Zones of Special Operation, and Detention Conditions

In an effort to effectively reduce crime and violence in Jamaica, the State has recently implemented two controversial strategies, targeted at vulnerable communities where there is "rampant criminality, gang warfare, escalating violence and murder and a threat to the rule of law"⁴:

1. The Law Reform (Zones of Special Operations) (Special Security and Community Development Measures) Act (2017):

⁴ See Section 4(2) of the ZOSO Act

[https://www.japarliament.gov.jm/attachments/article/339/The%20Law%20Reform%20\(Zones%20of%20Special%20Operations\)%20\(Special%20Security%20and%20Community%20Development%20Measures\)%20Act,%202017.pdf](https://www.japarliament.gov.jm/attachments/article/339/The%20Law%20Reform%20(Zones%20of%20Special%20Operations)%20(Special%20Security%20and%20Community%20Development%20Measures)%20Act,%202017.pdf)

2. States of Emergency (SOE): during an SOE, security forces have the authority to search premises, arrest and detain individuals without warrant, impose a curfew, and restrict access to public spaces.

SOEs/ZOSOs been declared in several parishes to date, namely St James, Westmoreland, Hanover, St Catherine, Clarendon, and South St Andrew. Civil society actors have raised concerns about the constitutionality of these measures, focusing on the over-reliance on extraordinary security powers as a regular policing strategy and the potentially normalizing effect that this can have.

An SOE is declared for an initial period of 14 day and may be extended to a period not exceeding three months. However, continual extensions have resulted in emergency periods lasting upwards of three months. .

For more information on the State of Public Emergency and Zones of Special Operations in Jamaica see Annex I - SOE/ZOSO

RECOMMENDATIONS

1. The State should sign and ratify The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
2. Comprehensive reform of the system of detention in line with international human rights standards for the deprivation of liberty must be implemented through legislation to put an end to the longstanding rights violations endured by people deprived of liberty.

X. Institutional Responses to Police Violence

Mandate and Powers of the Independent Commission of Investigations (INDECOM)

The functioning of the Independent Commission of Investigations (INDECOM) continues to be impeded by its insufficient authority and a lack of adequate resources. While there has been some positive progress in terms of political support, the State has not addressed numerous recommendations to clarify INDECOM's mandate. These outstanding issues threaten Jamaica's obligation to conduct efficient, impartial investigations and to provide an effective remedy.

INDECOM lacks powers that are foundational to any independent, investigative body's functions, such as to lay charges, arrest suspects, prosecute, and compel information. These powers have been challenged in Courts by members of the security forces, thereby forcing INDECOM into litigating costly cases to secure its authority.

A 2013 holding of the Jamaican Constitutional Court, in *The Police Federation and others v The Commissioner of the Independent Commission of Investigations and the Attorney General of Jamaica*, affirmed INDECOM's powers of arrest, charge, and prosecution.⁵ This matter was appealed; the subsequent Court of Appeal judgement that INDECOM's authority is limited to investigations effectively overturned the original holding. In December 2018, the Court of Appeal granted INDECOM's application for leave to appeal to the Privy Council, Jamaica's final appellate court. Even though this is an encouraging development, it is juxtaposed by the Court of Appeal's refusal to allow INDECOM to continue arresting,

⁵ Para 334

charging or prosecuting police officers while awaiting a Privy Council ruling.⁶ It is also important to reiterate that this matter in particular has forced INDECOM to dedicate its already limited time and resources to litigating for its survival.

The State established and properly dissolved a Joint Select Committee tasked with reviewing the INDECOM Act. The report of the Committee was tabled in Parliament in November 2015 and included several important recommendations that directly addressed the aforementioned issues. While the State has reported that a Cabinet submission has been prepared, this procedural step is no substitute for enactment.

INDECOM's Resources

The State's financial support for INDECOM has been inadequate and has, in fact, been decreasing. The budget provided for the 2017/2018 year was \$353.35 million, compared with \$366.492 million the previous year; this represents a decrease of about \$13 million.⁷ INDECOM has consequently had to rely on funding provided by international donors, without which it would have to reduce its staff and would be unable to manage its hefty case load. INDECOM continues to implement internal strategies to address the backlog of cases inherited from the Bureau of Special Investigations and the Police Public Complaints Authority. Nevertheless, the paucity of funding is an existential threat to INDECOM's work and the security of independent operations.⁸

The Special Coroner's Court

A Coroner's Inquest is conducted with the aim of determining whether anyone should be held criminally liable for a death, typically in cases where there are ambiguities regarding the circumstances of death or who should be charged. Established in 2009, the Special Coroner's Court is an essential element of investigations into fatal police shootings.

By the State's own admission, the Special Coroner's Court is ill-equipped to satisfactorily address the number of cases entrusted to it. "... the number of cases to be addressed has exceeded the capacity of the Coroner's Court to ensure timely processing."⁹

There is only one Special Coroner, who is required to travel to all 13 parishes to hear relevant cases. In a 2016 article published in the Jamaica Observer, the Special Coroner noted that there is a backlog of over 300 cases, but the court can only hear three or four cases per month. This effectively results in a disposal rate of about 30 cases per year.

The gravity of the backlog is such that Jamaicans for Justice has hundreds of cases awaiting a hearing date. Some of these cases predate the formation of the Court but were transferred to its remit. In one of JFJ's case, the client has been waiting more than 13 years for an inquest to commence. Five civil witnesses to this fatal shooting have reportedly died while the client awaits the start of the inquest.

The Special Coroner is unable to effectively clear the backlog without an increase in its constrained resources, including the appointment of an additional Coroner.

RECOMMENDATIONS

⁶ Jamaica Observer, "Court of Appeal says INDECOM has no constitutional right to challenge its ruling", Dec. 22, 2018.

⁷ INDECOM, "How is INDECOM funded?" <https://www.indecom.gov.jm/how-is-indecom-funded/951>

⁸ INDECOM Quarterly, "Improving INDECOM's Investigations", Jan-March 2019 <https://www.indecom.gov.jm/wp-content/uploads/2019/06/The-INDECOM-Quarterly-January-March-Q1-2019-Final.pdf>

⁹ See CCPR/C/JAM/Q/4/Add.1, Oct. 18, 2016

1. For INDECOM to effectively execute its mandate, it must have the power charge and prosecute member of the Security Forces who have violated human rights.
2. Adequate resources should be channelled to the Coroner's Court to efficiently address the number of cases entrusted to it.

XI. Child Rights

Children in Conflict with the Law

Jamaica Constabulary Force 2017 statistics show that 648 children had been arrested for offences including murder, assault, robbery and sexual offences.¹⁰ It is essential that children entering the justice system for infringing the law are treated in a manner which promotes their dignity and prioritizes the child ultimately being reintegrated into society. This can be accomplished through a clear and robust legislative and regulatory framework that specifies the roles and responsibilities of all actors in the child justice sector, strengthened capacity of all persons who deal with children in conflict with the law and the implementation of monitoring mechanisms that ensure there is strict adherence to and a respect for the child's rights and dignity at all levels.

The detention of children as a last resort for the shortest possible time remains a concern for human rights actors. With the State of Emergency operating throughout various parts of the island, there have been concerns raised about the arrest and detention of children within this framework. There are concerns that children are being held in inhumane situations.

Children housed in juvenile correctional facilities have reported verbal and physical abuse and have noted that they are not allowed to speak in court and feel excluded from the judicial process. Within the facilities in which they are housed, they cite bug infested mattresses, lack of water and unhygienic bathrooms.¹¹

Children in conflict with the law face a multitude of additional issues. The most glaring of which include:

- i. Juveniles continue to be detained at Police lock-ups. There are instances where they have been detained for periods of more than 24 hours, the maximum amount of time minors should even be at such places of detention.
- ii. Juvenile facilities have been noted as resembling prisons with substandard conditions.¹²
- iii. Education in juvenile facilities has been found to be unsatisfactory
- iv. There is limited mental health support for children who are detained
- v. The Child Care and Protection Act of Jamaica continues to have legislation which allows the detention of children deemed "beyond control"

Additional information regarding the status of children in conflict with the law can be seen in Annex J – Children in Conflict with the Law

RECOMMENDATIONS

¹⁰ [National Plan of Action for an Integrated Response to Children and Violence 2018-2023](#), pp. 31-32

¹¹ [The Report of the Task Force on the New Regime for Juveniles in Remand and Correctional Facilities in Jamaica](#)

¹² Jamaicans for Justice, *Submission from Jamaicans for Justice (JFJ) For consideration in the formulation of the List of Issues by the Human Rights Committee's Task Force during the 100th Session (11-29 October 2010)*.

1. *In order to protect the rights and well-being of children who are deprived of their liberty, steps must be taken to remove minors from all police lock-ups and provide alternative holding facilities not in police lock-ups that are conducive to their safety, comfort and rehabilitations.*
2. Meaningful implementation of that legislation for the Child Diversion Act should result in significant advances in the treatment of children in conflict with the law.
3. Increase resources for child protection entities.
4. The Ministry of Education, Youth and Information must ensure that the educational provisions for wards of the state are aligned to those that are in place for students in the general education setting in public educational institutions.
5. Provide consistent, periodic and frequent psychological support services to minors in detention as a preventative measure to protect against critical incidents occurring and to heighten psychological support services in the case that a critical incident does in fact occur.
6. Adopt minimal standards for conditions in juvenile correctional centres continue to impede protection of children in conflict with the law.

Recognize that the practice that allows the deprivation of liberty of children deemed as “beyond control” is demonstrably abusive, serves absolutely no legitimate public good, and is inimical to the best interests of the child. Accordingly, the State should repeal all provisions that authorize the deprivation of liberty of these children who are deemed ‘beyond control’ or who otherwise display behavioural problems, unless they are lawfully deemed to be in need of care and protection as defined by section 8 of the CCPA.

Corporal Punishment

Section 9 of the CCPA makes it an offence for an adult who has custody, charge or care of a child to expose said child to forms of cruelty. The extent of the protection offered to children under this section ranges from assault to physical or mental ill-treatment, neglect, abandonment or exposure in a way likely to lead to suffering or injury, indicating that the spirit of the section aims at providing complete protection to the child against all forms of cruelty.

Of grave concern is the common law reasonable chastisement defence to this section which allows parents and persons acting in *loco parentis* to inflict “reasonable and moderate” punishment on children which considers the child’s age and education and is administered with a proper instrument. This has the effect of undermining and weakening the effectiveness of the Act by allowing persons to claim that forms of violence against children, oftentimes masked as discipline and punishment, are justifiable under the shroud of being reasonable or moderate.

For more information on corporal punishment see Annex K – Corporal Punishment

RECOMMENDATIONS

1. An approach which would be more attuned to protecting the best interest of the child would be the inclusion of provisions in the Act that indicate that the allowance of child discipline and punishment practices in alignment with child rearing should not allow any form of corporal punishment by teachers, persons in educational, or child care institutions or any adult other than the parent or guardian of said child.

2. Further, in the instance of parents and guardians, it should not be a defence to the crime of cruelty to a child to state that the cruelty was in line with the infliction of corporal punishment in the home or family setting and was reasonable or moderate.

XII. Protection of Human Rights Defenders

In March 2017, Latoya Nugent, an activist, was arrested after she publicly named alleged perpetrators of sexual violence on social media. Nugent was subsequently charged under Section 9(1) of Jamaica's Cybercrime Act for "use of a computer for malicious communication" which it is alleged was menacing in nature and subsequently caused annoyance, distress and harm.¹³ Nugent is part of a new movement of women and sexual violence survivors called the Tambourine Army. This group has turned to the internet to campaign against gender-based violence, talk openly about their experiences and to tackle issues around the silencing of survivors.

Though all charges were dropped, because the utterances were deemed by the Jamaican Director of Public Prosecutions to not be obscene, threatening or menacing in accordance with the act, this case represents the threats to freedom of expression that arise from the Cybercrime law.¹⁴ Additionally, despite the criminal charges being dropped, the Supreme Court of Jamaica has entered a default judgment against Nugent and awarded \$16 million to one of the men accused of sexual violence who filed a defamation suit against Nugent.¹⁵ An appeal process is currently underway.

RECOMMENDATIONS

1. Enact and implement laws and policies that recognize and protect all human rights defenders, and ensure prompt, thorough and impartial investigations of all violations against them.

¹³ [Jamaican Activist Arrested Under Cybercrime Law Amid Her Campaign Against Sexual Violence](#), Global Voices, 2017.

¹⁴ [Media Release Regina v Latoya Nugent for Breaches of the Cybercrimes Act](#) Office of the Director of Public Prosecutions, 12 May 2017.

¹⁵ [Supreme Court Awards \\$16M In Defamation Award Against Gender Activist Latoya Nugent](#) The Gleaner, 31 January 2019.