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JAMAICANS FOR JUSTICE



KILLING IMPUNITY:
FATAL POLICE SHOOTINGS AND EXTRAJUDICIAL EXECUTIONS IN JAMAICA:
2005-2007

*A Report prepared by Jamaicans for Justice and the International Human Rights Clinic of
The George Washington University Law School
for submission to the Inter-American Commission on Human Rights*

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Executive Summary	3
I. Introduction.....	5
II. Police Killings, Extrajudicial Executions and Impunity in Jamaica.....	9
A. Background and Context: 1999-2005	9
B. Police Killings and Extrajudicial Executions: 2005-07	13
1. Paradigmatic Cases	13
a. Clifton Walters, Romario Bruce, Devine Parkinson and Orville Russell	13
b. Summerfa Dryden.....	14
c. Andre Thomas.....	15
d. Jeff Smellie	17
e. Dexter Hyatt.....	17
f. Tian Wolf.....	18
g. Lance Zab.....	19
2. Concluding Observations.....	19
C. Update of a Pattern of Impunity.....	20
1. The Killings of Kraal, Clarendon: A Case Study in Impunity.....	21
2. Police Investigations	23
a. Bureau of Special Investigations (BSI).....	24
b. Preservation of Crime Scene and Evidence	25
c. Monitoring Weapons, Munitions, and Evidence.....	26
d. Forensics and Witness Protection	27
e. Police Training.....	28
3. Independent Investigations	29
4. Prosecutions and the Judiciary.....	31
a. Director of Public Prosecutions	31
b. The Judiciary.....	33
c. Redress for the Victims.....	33
5. Concluding observations.....	34
III. Jamaica’s Compliance with International Human Rights Law.....	35
A. Jamaica and the American Convention on Human Rights	35
1. Violations of the Rights to Life (Article 4) and Humane Treatment (Article 5)	35
2. Rights to Due Process and Judicial Protection (Articles 8 and 25)	37
B. Forging Compliance: International Standards, Principles, and Guidelines	38
1. Standards for Compliance.....	40
a. Training and Monitoring.....	40
b. Use of Force and Firearms.....	41
c. Police and Independent Investigations.....	43
d. Prosecutorial and Judicial Integrity	46
C. Conclusion.....	49

EXECUTIVE SUMMARY

This Report updates prior studies on the practice of fatal police shootings and extrajudicial executions in Jamaica, as well as the “pattern of impunity” that feeds it. In addition to providing the latest empirical evidence on police killings, we examine the recent functioning of the authorities, mechanisms, and procedures charged under Jamaican law with ensuring that police who exceed their legal mandate in the use of lethal force are held accountable. Our initial objective is to paint a comprehensive picture of the full-scale human rights crisis prevailing in Jamaica today in this regard. Our second objective is to analyze this situation in light of Jamaica’s legal obligations under the American Convention on Human Rights to determine precisely how and why the country is seriously out of compliance with prevailing standards of civilized conduct. Our findings include the following:

- The statistics for 2007 confirm that what had been a borderline human rights emergency in 2000 had become, by early 2008, a full-blown humanitarian crisis, with over 270 victims of police killings, nearly a fifth of all murders committed last year.
- The widespread practice of fatal shootings and extra-judicial executions by Jamaican police documented through 2004 continues unabated to the present day, and in fact has gotten much worse.
- This practice is not just more widespread than ever, it appears now to be systematic as well. On average, at least one Jamaican was shot and injured or killed every day of 2007 as a result of a police shooting.
- Police follow established *modus operandi* in carrying out unlawful killings, which includes targeting victims – often unarmed young men or boys – from lower socio-economic strata who pose no threat to police.
- The motives behind the unlawful killings range from reckless or negligent homicides, to calculated vigilantism, to corruption and political polarization.
- Despite repeated claims of “shoot-outs” and finding firearms on the deceased victims, police are rarely injured or killed in these gun-battles, which residents and eyewitnesses frequently deny ever happened.

With respect to the issue of impunity surrounding police killings, we reach the following conclusions:

- It is evident that the pillars of impunity identified in prior reports to the Inter-American Commission – deeply deficient police investigations; a lack of effective independent oversight; and pervasive pro-police bias among investigators, prosecutors and judges – remain virtually unshaken.
- Of special concern is the persistent failure by the JCF’s Bureau of Special Investigations to conduct timely, adequate and effective investigations into the burgeoning number of police killings. Effective measures have yet to be taken to address the rampant abuses that arise in the control of crime scenes, firearm use and registration, collection and/or manipulation of evidence, and intimidation of witnesses.
- Recent government initiatives such as the pursuit in Parliament of a new independent civilian commission of inquiry to replace the ineffective Police Public Complaints Authority are recognized and encouraged.

- The insufficient progress made in overcoming this longstanding pattern of impunity is not exclusively the BSI's fault: even when documented cases of police abuse are referred to the Director of Public Prosecution's Office, the vast majority are closed with no action taken. Less than 10% of all police shootings since 1999 have been prosecuted.
- Egregious cases of police executions referred by BSI are either not pursued in the courts by the DPP's office, or are un-zealously prosecuted, as in the notorious Kraal case.
- The court system is either overwhelmed, as in the 500 plus unresolved fatal incidents pending before the Coroners courts, or incapable (due to a variety of problems) of impartially resolving the few cases that are criminally prosecuted before a judge and jury.
- The miniscule number of police killing or injury cases that actually make it to the criminal courts – a mere 134 out of nearly 3400 total incidents since 1999, involving nearly 1500 fatalities – is testimony to the obstacles to accountability that persist. In all that time, there has been only one conviction of a police officer for murder, in 2006.

When the foregoing conclusions are analyzed in light of Jamaica's obligations under the American Convention on Human Rights, it becomes evident that the widespread and systematic practice of fatal shootings by Jamaican police, a substantial percentage of which are extrajudicial executions, produces egregious violations of American Convention Articles 4 (Life) and 5 (Physical Integrity) on a continual basis. At the same time, the near absolute failure to act diligently to prevent such abuses, or to adequately investigate and punish the police perpetrators of extrajudicial, arbitrary or summary executions, leads to further grave violations of Conventions Articles 1(1), 2, 8, and 25.

Building on the foregoing analysis, our final goal in this Report is to offer recommendations to the Jamaican authorities to assist them in effecting positive change. Among them:

- Jamaica must take concrete steps to improve the quantity and quality of training for its law enforcement officials in human and civil rights standards. It should also establish follow-up mechanisms to monitor and support active police officers in the application of these standards, especially those concerning crime scene and evidence preservation, and the proper control of weapons and munitions involved in fatal police shootings.
- Jamaica must adopt measures to promote greater accountability for failure by police officers to comply with domestic professional standards of conduct, many of which already conform to international norms. Where they do not, this deficiency should be remedied. Effective enforcement procedures should be established and utilized.
- Any independent civilian inquiry commission established should adopt procedures and ensure training for its investigators in accordance with applicable international standards. At the same time, steps should be taken to ensure that police investigators are better equipped to comply with these norms. All investigators – police and civilian – should be sufficiently resourced and supported with the forensic expertise necessary to conduct adequate investigations of police killings.
- Jamaica must ensure diligent criminal investigation, prosecution, and punishment of police perpetrators in those cases where unlawful use of force and firearms results in the killing of civilians. To achieve this, institutional reforms are required to ensure that the independence and impartiality of the prosecutorial and judicial authorities are reinforced and some degree of accountability achieved.

I. INTRODUCTION

On the morning of August 28, 2007, fourteen year-old Lance Zab was sitting in front of a neighborhood shop in Kingston, eating his breakfast of cornbread and juice with another youth, when four policemen from the Jamaican Constabulary Force arrived. Lance's companion fled, but the boy remained behind as two of the police came through the yard towards him. Eyewitnesses recount how the agents confronted Lance and, without warning, shot him in the stomach and foot. The boy began crying; neighbors heard him begging for his life: "a no mi, please don't kill me!" The police then dragged the injured boy out to the street, threw him up against a parked car, and according to stunned observers, shot him in the head, strewing pieces of the boy's skull and "marrow" in the street.

A crowd of local residents formed in angry protest, outraged at what neighbors were calling the cold-blooded killing of the quiet, junior-high schooler they knew. The police began firing shots into the air to disperse them. Lance's cousin managed to arrive on the scene shortly after the incident, and requested permission to pick up his dead relative's remains. The police agreed. He then picked up the scattered pieces of Lance's skull, which later were turned over to investigators. Official reports claimed that Lance Zab had been killed in a shoot-out with police involving various men; the officers turned in a handgun presumably used by the boy. At the post-mortem, however, the examiner found no trace of gunpowder on the victim. All they found, still clutched in his hand, was the cornbread Lance had bought for breakfast.

As tragic as the death of Lance Zab is, it is merely one of hundreds of such killings committed by members of the Jamaican Constabulary Force (JCF) every year. Since 2004, over 700 Jamaicans -- men, women and children like Lance -- have been shot and killed by police under circumstances that, in a substantial percentage of cases, point to summary or arbitrary executions. In 2007 alone, a record year for the third year in a row, 272 people died violently at the hands of Jamaican police, the majority of them probable victims of extrajudicial executions. (Another 153 were shot and injured.) For years, national and international human rights organizations have denounced the longstanding practice of excessive use of lethal force by JCF agents. They have also echoed the popular sentiment that such police violence is generally directed at persons belonging to lower socio-economic sectors who reside in marginal or "inner-city" neighborhoods.¹ What is most

¹ See e.g., U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights resolution 2003/53 (Mission to Jamaica)*, Doc. E/CN.4/2004/7/Add.2 (Sep. 26 2003) [hereinafter 2003 UN Report]; U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Addendum to the Report of the Special Rapporteur Philip Alston (Follow-Up to Country Recommendations)*, E/CN.4/2006/53/Add.2 (Feb. 28, 2006) [hereinafter 2006 UN Report]; Amnesty Int'l, *Annual Report 2006 (Jamaica)*, available at <http://web.amnesty.org/report2006/jam-summary-eng> [hereinafter AI Annual Report 2006]; Amnesty Int'l, *Killings and Violence by Police: How many more victims?*, Apr. 10, 2001, available at [http://web.amnesty.org/library/pdf/AMR380032001ENGLISH/\\$File/AMR3800301.pdf](http://web.amnesty.org/library/pdf/AMR380032001ENGLISH/$File/AMR3800301.pdf) [hereinafter 2001 AI Report]; Jamaicans for Justice, *Pattern of Impunity: A Report on Jamaica's Investigation and Prosecution of Deaths at the Hands of Agents of the State*, submitted to the Inter-American Commission on Human Rights, Sep. 30, 2005 [hereinafter JFJ Impunity Report]; U.S. Department of State, *Country Report on Human Rights Practices, Jamaica 2006*, released on March 6, 2007, available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78897.htm> [hereinafter DOS 2006 Report].

alarming about this practice, however, is that, despite these efforts, it is becoming more widespread and systematic than ever before.

One of the principal factors motivating the surge in unlawful police killings is the persistence of impunity, which has traditionally protected perpetrators from prosecution in the vast majority of such cases. The miniscule number of police shooting cases involving fatalities or injuries that actually make it to the criminal courts – less than 10% of the total since 1999 – is testimony to the obstacles to accountability that persist. In all that time, there has been only one conviction for murder by a police officer, in 2006.² In a seminal 2004 report on the subject, Jamaicans for Justice (JFJ), a non-profit, non-partisan citizens’ rights action group, revealed not only that police killings continued, but also that there existed a parallel “pattern of impunity” flowing from the failure of the Jamaican justice system to respond adequately or effectively to this practice.³ The JFJ report diagnosed a series of institutional deficiencies in the investigation and prosecution of police perpetrators that continue to be of critical importance to the present day. Without proper investigations or true accountability for arbitrary or unlawful police conduct, there is little incentive for agents to control it.

This Report seeks to update JFJ’s study with respect to the escalating number of fatal police shootings and extrajudicial executions since 2004, as well as the “pattern of impunity” that feeds it. In addition to providing the latest empirical evidence on police killings, we examine the recent functioning of the authorities, mechanisms, and procedures charged under Jamaican law with ensuring that police who exceed their legal mandate in the use of lethal force are held accountable. Our initial objective is to paint a comprehensive picture of the full-scale human rights crisis prevailing in Jamaica today in this regard. Our second objective is to analyze this situation in light of Jamaica’s legal obligations under the American Convention on Human Rights to determine precisely how and why the country is seriously out of compliance with prevailing standards of civilized conduct. Our final goal, building on the foregoing analysis, is to offer recommendations to the Jamaican authorities to assist them in effecting positive change.

We are convinced that, despite the high levels of criminality plaguing the country, the time is ripe for change. The challenges facing the Jamaican Labour Party government of Prime Minister Bruce Golding when he took office in September of 2007 were no less daunting than those faced by his predecessors. The problem of violent crime remains critical: Jamaica manifests a per capita homicide rate that is the highest in the world.⁴ Well-armed gangs trafficking in narcotics and guns exercise control in many inner-city communities. While combating such crime in 2007, nineteen policemen were killed in the line of duty; in 2006 it was at least ten, and in 2005, thirteen.⁵ The overburdened judicial system strains to investigate, prosecute, and convict persons who commit violent offenses. Understandably, in light of these problems, great pressure is brought to bear on the

² See Annex I, Bureau of Special Investigations: Summary of Shooting Incidents, July 1, 1999 – Dec. 19, 2007 [hereinafter BSI Table]; Annex II, GW/JFJ Revised Summary of BSI Chart [hereinafter GW/JFJ Chart].

³ JFJ Impunity Report, *supra* note 1, at 3.

⁴ According to THE ECONOMIST, the homicide rate for 2007 was 59 per 100,000 people, making Jamaica the most violent country in the world. Contrast these figures with those for Colombia, presently at 36 homicides per capita, despite an ongoing internal armed conflict. *Sun, Sea and Murder*, THE ECONOMIST, Jan. 31, 2008, at 46. In 2005, there were 62 homicides per 100,000 inhabitants in Jamaica; in 2006, this rate dropped to 45 per 100,000. DOS 2006 Report, *supra* note 1.

⁵ Lewin Press conference, *supra* note 4; DOS 2006 report, *supra* note 1.

government and the police to respond effectively to this “monster problem”.⁶ Jamaican authorities including the police have long maintained that they must take a hard-line with crime; that only through confrontation and the forceful repression of the criminal element will public order be advanced. Civilian deaths resulting from aggressive law enforcement are readily dismissed as “collateral damage.”⁷

But, in a break with past practice, new Police Commissioner Rear Admiral Hardley Lewin in his inaugural press conference on December 20, 2007, recognized that this hard-line approach is not working. Violent crime and homicides have not been significantly reduced, he said, and there continues to be “too much killing.” Quoting the adage that “you cannot fight fire with fire,” Commissioner Lewin announced a comprehensive new strategy to shift the focus of law enforcement away from a “war-on-crime” model premised on concerted use of force, to one that stresses the role of a modern, professionalized police organization allied with civil society in communities throughout the country to address the root causes of crime, as well as its consequences. He acknowledged that there should be greater accountability for police abuses. In response to specific questions about the wave of apparent extrajudicial killings by police, Commissioner Lewin insisted that such cases would be “dealt with seriously and ruthlessly,” and invited public scrutiny of the implementation of his new policies. Jamaicans for Justice guardedly described the new Commissioner’s public debut as “encouraging.”⁸

Even more encouraging is that change also appears to be coming from the highest officials in government. A few days after security forces shot five men to death in west Kingston on January 13, 2008, Jamaican Prime Minister Bruce Golding visited the house where the killings took place. He observed that the manner in which the men were slain “raises questions that must be answered,” and called for an immediate coroner’s inquest.⁹ The press similarly reported on the September 20, 2007 visit of two Cabinet Ministers, including National Security Minister Derrick Smith, to a community in Kingston where police had fatally shot two people two days before, one of them a 19 year-old pregnant woman killed by a stray police bullet.¹⁰ The day after the double shooting, Jamaican Minister of Justice and Attorney General Dorothy Lighthouse met with human rights groups and issued a press release to express her concern over the incident. At the same time, she quoted the Prime Minister to reiterate the government’s commitment to establishing a “single, independent authority to investigate instances of abuse by members of the security forces.”¹¹

While initiatives like the appointment of Commissioner Lewin and the proposed civilian inquiry commission, among others, reflect a substantial reorientation of the Jamaican *government’s*

⁶ Press Release, Jamaicans For Justice, New Police Commissioner Encouraging Signal: Monster Job for a Monster Problem (Dec. 20, 2007) (on file with GWIHRC) [hereinafter JFJ Press Release].

⁷ See, e.g. Earl Moxam, *One-on-One with Reneto Adams*, JAMAICA GLEANER, Dec. 28, 2005. Relevant newspaper articles from the Jamaica Gleaner can be found at the following website: <http://www.jamaica-gleaner.com/>; see also Don Robotham, *Crime and Police Brutality*, JAMAICA GLEANER, Oct. 21, 2007; see also Vaughn Davis, *Anxiety, Celebration Mark Last Moments of Crawle Trial*, JAMAICA OBSERVER, Dec. 21, 2005. Relevant newspaper articles from the Jamaica Observer can be found at the following website: <http://www.jamaicaobserver.com/>

⁸ JFJ Press release, *supra* note 6.

⁹ *Prime Minister of Jamaica Calls for Tivoli Shooting Inquest*, JAMAICA GLEANER, Jan. 17, 2008.

¹⁰ Karyl Walker, *Cops Removed: Officers in St. Thomas Shooting Taken Off Front-Line Duty*, JAMAICA OBSERVER, Sept. 20, 2007.

¹¹ Press Statement, Ministry of Justice, Justice Minister Concerned Over St. Thomas Shooting Incident (Sept. 19, 2007) (on file with GWIHRC) [hereinafter Ministry of Justice Press Statement].

approach to the problem of police killings, they alone will be insufficient to remedy the systemic problems that underpin this widespread practice or, more importantly, to overcome the myriad of obstacles to accountability that plague the Jamaican justice system. The Director of Public Prosecutions, for example, continues to possess unfettered power in decision-making with respect to which police perpetrators of unlawful killings are prosecuted, a power he exercises on relatively rare occasions. In the few instances in which such prosecutions are initiated, profound deficiencies in the investigative process handicap efforts to achieve any degree of accountability for the extrajudicial executions that take place. These failures coupled with lapses in the impartiality of the judiciary guarantee that convictions for such executions are exceedingly sparse.

Clearly, a broader perspective on the problem is needed. It is our goal to provide some of that vision in this Report. Accordingly, in Part II, we map the recent practice of police killings using statistics and other empirical data, with an emphasis on the 2005-07 reference period. Regarding the issue of impunity, special attention is paid to describing progress in those areas of strategic importance identified in previous reports, such as police training and monitoring; use of force and firearms; investigations; prosecutions and the judicial process. Case studies are provided to illustrate the practices and patterns under study. Part III maps the pertinent normative framework under the American Convention on Human Rights as applied to the factual panorama described in the prior part. We conclude by drawing on an array of universal standards designed by experts especially for the law enforcement context to guide the interpretation of Jamaica's obligations in this arena, with a view to promoting greater state compliance with regional human rights norms.

To meet our stated goals we have rigorously documented what by all accounts continues to be a desperate situation, one that has received unprecedented levels of attention not just from the government but also from ordinary Jamaicans fed up with the increasing numbers of police killings and the attendant impunity.¹² We now add our voice to those in Jamaica who insist that these killings must stop. In preparing our Report, we collected dozens of first-hand accounts from family members of persons slain by JCF agents since 2005. We also spoke with high-ranking officials from the new government, including the Minister of Justice and Attorney General, to take into account the recent changes in policy.¹³ When this situation is held up to the light of international law, it becomes evident that there is much more Jamaica must do to bring the conduct of its law enforcement and judicial authorities into line with the binding human rights commitments it has voluntarily assumed. And while there is guarded optimism due to the new government's laudable efforts to address the wave of killings by police and surrounding impunity, it is equally clear that sustained scrutiny by the international community is essential to ensure that these efforts are reinforced by wider institutional reform, as well as backed by the political will necessary to make them effective.

¹² Survey commissioned by Jamaicans For Justice, conducted Nov. 24-25, 2007 (on file with GWIHRC) [hereinafter JFJ Survey]. According to a recent poll, 44% of Jamaicans believe that the police use excessive force. Additionally, 62% believed that police officers in Jamaica were corrupt. Perceptions of the judicial system fared even worse: 68% of those surveyed think that the people of Jamaica are not treated equally and fairly by the legal system, and 72% thought that the government usually believed the police version of events.

¹³ Much of this fact-finding took place during an on-site visit to Kingston, Jamaica, by the GW International Human Rights Clinic (GWIHRC), from December 17-21, 2007.

II. POLICE KILLINGS, EXTRAJUDICIAL EXECUTIONS AND IMPUNITY IN JAMAICA

This Part has three sections. The first summarizes the background and context of police abuses, extrajudicial executions and impunity in Jamaica. The second compiles official statistics as well as other recent empirical evidence to demonstrate how police shootings and extrajudicial executions have increased drastically since 1999, with emphasis on the 2005-07 reference period. The third section focuses on the phenomenon of impunity. It provides updated information in several areas of critical importance, such as police investigations; use of force and firearms; training and monitoring of police; prosecutions; and the judicial process. Case studies are provided or referenced throughout to illustrate the issues identified.

A. Background and Context: 1999-2005

Over the past eighteen years, a widespread pattern of police extrajudicial executions has been documented by international organizations,¹⁴ international¹⁵ and national human rights NGO's,¹⁶ and the State.¹⁷ According to Amnesty International, police extrajudicial executions, abuse and brutality have been a longstanding tradition in Jamaica, stretching back at least to the early seventies.¹⁸ Between 1990 and 2000, according to official statistics, an average of 140 people per year were shot and killed by Jamaica's police, a shockingly high figure in a country of only 2.6 million people.¹⁹ Amnesty International documented that police shot dead more than 1,400 people in that decade, a total that "borders on a human rights emergency."²⁰ Things only got worse in the new century. Between 2000 and 2002, the number of deaths rose to 150 per year and then, after decreasing slightly in 2003 and 2004, rose dramatically to 168 in 2005.²¹ All in all, between October 1999 and February 2006, at least 700 and potentially more than 800 persons died in the line of fire of police.²² These alarming statistics are updated and analyzed further in the next section.

The Inter-American Commission recognized that "a pattern has been identified in Jamaica whereby a disproportionately large number of killings are associated with the State's security forces, but where very few prosecutions have been undertaken in relation to those

¹⁴ See 2006 UN Report, *supra* note 1, ¶¶ 45-75; see also 2003 UN Report, *supra* note 1, ¶¶ 59-77.

¹⁵ See, e.g., AI Annual Report 2006, *supra* note 1; 2001 AI Report, *supra* note 1, Annex A; Press Release, Human Rights Watch, Jamaica: Investigate Police and Military Killings (Jul. 12, 2001), available at http://hrw.org/english/docs/2001/07/12/jamaic127_txt.htm.

¹⁶ See, e.g., JFJ Impunity Report, *supra* note 1.

¹⁷ In the 2003 UN Report, the Special Rapporteur based her conclusions on official statistics provided by the JCF's Bureau of Special Investigations ("BSI"), the Police Statistics Unit of the JCF, and the Ministry of National Security. See 2003 UN Report, *supra* note 1, ¶ 22.

¹⁸ See 2001 AI Report, *supra* note 1, at 3.

¹⁹ 2003 UN Report, *supra* note 1, ¶ 22; 2001 AI Report, *supra* note 1, at 9.

²⁰ Amnesty Int'l, *Jamaica - Police Killings: Appeals Against Impunity*, at 2, AMR 38/012/2001, Aug. 2001, Annex B [hereinafter 2001 AI Appeals Report].

²¹ 2006 UN Report, *supra* note 1, ¶ 46; AI Annual Report 2006, *supra* note 1.

²² *Id.*, *supra* note 1, ¶ 47; Press Release, Amnesty Int'l, Jamaica: First police officer in over six years convicted of murder while on duty (Feb. 23, 2006), available at <http://web.amnesty.org/library/Index/ENGAMR380012006?open&of=ENG-JAM>.

killings.”²³ The Commission noted that this pattern has yielded a “perception in Jamaica that the police are above the law,” a result that “has adversely affected the relationship of trust that should exist between a population and the forces responsible for protecting them.”²⁴ Because of this, the Commission considered that an extrajudicial execution in Jamaica had to be viewed “in the broader context of the problem of impunity for police killings.”²⁵

Even accounting for the fact that Jamaican police have operated in a high crime atmosphere, the U.N. Special Rapporteur on Extrajudicial Executions noted in her 2003 report that “there are [still] too many incidents where the police are reported to use unnecessary violence which often results in the death of suspects, or even of innocent people.”²⁶ In her report, the Special Rapporteur condemned the “direct, deliberate and excessive use of force without any provocation” practiced by police agents; she noted the connection of this practice to “a certain organizational culture” in the JCF where extrajudicial killing of “criminals” is often justified as an alternative to an ineffective judicial system.²⁷ She also noted the use of “completely inappropriate” weaponry by the JCF and found that “many instances of excessive use of firepower by the police seem to have contributed to deaths which could otherwise have been avoided.”²⁸

Amnesty International has scrupulously documented the abuse of force by the Jamaican Constabulary Force since the 1980’s and has identified a clear “pattern of extra-judicial executions and excessive use of force committed by police officers.”²⁹ For the organization, “[a]n extrajudicial execution is an unlawful or deliberate killing carried out by order of a government or with its complicity or acquiescence.”³⁰ The pattern of these executions in Jamaica can be determined by a number of similarities in individual cases, despite the differences in victims and circumstances. Some of these common characteristics include targeting individuals that pose no physical threat and incapacitating victims before shooting them dead. A common explanation used by police to deflect prosecution has been to allege that a “shoot-out” occurred in which police returned fire while defending themselves from armed individuals.³¹ According to Amnesty International, despite the police explanations in these cases, “compelling forensic and other evidence” often indicate that an unlawful killing took place instead.³² Examples abound of such cases before 2005,³³ while recent examples are described in the next section.

²³ Michael Gayle v. Jamaica, Case 12.418, Inter-Am. C.H.R., Report No. 92/05, OEA/Ser.L/V/II.124, doc. 5 ¶ 88 (2005) [hereinafter Michael Gayle Case].

²⁴ *Id.* ¶ 93.

²⁵ *Id.*

²⁶ 2003 UN Report, *supra* note 1, ¶ 61.

²⁷ *Id.*

²⁸ *Id.*, ¶¶ 61-64.

²⁹ 2001 AI Appeals Report, *supra* note 20, at 2.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See e.g., 2001 AI Report, *supra* note 1, at 14. In the early morning of September 19, 2000, William Richards was killed in his house in West Kingston by members of the Crime Management Unit. Members of the community informed Amnesty International that police officers entered Richards’ bedroom, placed his head in a drawer and shot him in front of his three-year-old son. He was reportedly heard shouting “murder” before three or four shots were heard being fired. The police report alleged that Richards had been shot outside his house after opening fire on police. His three-year-old son was later taken into custody before being released without charge several hours later.

Traditionally there has been virtually complete impunity for unlawful police killings in Jamaica. In 2006, the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions reported that “[F]rom October 1999 to February 2006, not a single police officer was found guilty on charges related to the fatal use of force, although more than 700 persons had been killed by the police during these six years.”³⁴ The Special Rapporteur concluded his report by observing with concern that “while the number of persons shot by the police reached a new all-time high in the year 2005, the inexcusable situation of nearly complete impunity for these killings persists, reinforcing the tendency of law enforcement officials to substitute extrajudicial executions for investigation and criminal procedure.”³⁵ Amnesty International had already affirmed in 2001 that successful prosecution of police officers involved in human rights violations was extremely rare in Jamaica.³⁶

Impunity for police officers involved in extrajudicial killing is not a recent phenomenon in Jamaica. Between 1990 and 1994 an average of 140 people a year were reported killed by the Jamaican police force, yet only 2 to 3 % of those cases resulted in the Director of Public Prosecution (DPP) instituting criminal charges against those responsible.³⁷ During her 2003 visit to Jamaica, the Special Rapporteur observed that no information was received from the Jamaican government regarding police officers convicted for extrajudicial executions, although the numbers of reported police killings both from government and other sources were alarmingly high.³⁸ She pointed out that as a result there was a palpable disillusionment of the Jamaican people with the criminal justice system.³⁹

International and Jamaican NGOs like Amnesty International and Jamaicans for Justice, respectively, repeatedly expressed concern that, despite the authorities' assurances to the contrary, police investigations of police shootings failed to conform in many respects to international standards.⁴⁰ The lack of independence and thus impartiality has been particularly crippling. Since 1999, the specialized unit within the JCF responsible for investigating claims of unlawful killings and abuse by police is the Bureau of Special Investigations (BSI).⁴¹ However, this situation of police investigating police created “an unacceptably high probability for bias,”⁴² one that was borne out in practice given the near perfect levels of impunity described above. The

³⁴ 2006 UN Report, *supra* note 1, ¶ 47.

³⁵ *Id.* ¶ 75.

³⁶ 2001 AI Report, *supra* note 1, at 67.

³⁷ JFJ Impunity Report, *supra* note 1, at 27.

³⁸ 2003 UN Report, *supra* note 1, ¶¶ 24 - 27

³⁹ *Id.* ¶ 75.

⁴⁰ See e.g. 2001 AI Report, *supra* note 1, at 15. Amnesty International received information that William Richards' house had been ransacked and that vital forensic evidence had been removed and disturbed. His body was removed from the premises several hours before investigative officers arrived. Neither the property nor its surroundings had been sealed from the public, thereby preserving the scene for forensic investigation. The mattress and bed in his room had been turned upside down and the bedding material removed. The drawers of the chest in which he had allegedly been shot had been removed, and one appeared to be stained with blood and brain matter. Family members were refused permission to view his body.

⁴¹ Jamaicans for Justice, *For Want of a Nail: Jamaicans For Justice (JFJ) Submission to the Jamaican Justice System Reform Initiative*, Feb. 28, 2007, at 11 [hereinafter JFJ Reform Initiative Report]. The BSI is discussed in more detail below. See Part II(C)(2)(a).

⁴² *Id.* at 13.

JCF itself admitted to the need for more effective monitoring of lower ranking officers who are reported to be the most responsible for human rights abuses.⁴³

It is therefore not surprising to find that most incidents assigned to the BSI were not investigated promptly, impartially or thoroughly.⁴⁴ The collection and analysis of forensic evidence were cause for particular concern. It was commonly reported that police investigators arrive at the scene of shootings after considerable delays - of hours, days or, in several cases reported to Amnesty International, even weeks.⁴⁵ Investigators failed to undertake thorough examinations at the scenes of many police shootings. This failure to arrive promptly at incidents provided further opportunity for crucial evidence to be contaminated or removed.⁴⁶ In particular, there were reports of police officers removing or interfering with vital forensic and ballistics evidence after a shoot-out, including the planting of weapons on victims.⁴⁷

In most cases, the relevant authorities also failed to conduct adequate and complete autopsies.⁴⁸ After the review of various autopsy reports from Jamaica, an independent forensic expert consulted by Amnesty International for its 2001 report concluded that these “did not constitute autopsies in the normally understood sense of the word and failed to reach internationally accepted standards for best practices. Every autopsy report [reviewed] lacked the most basic, essential data...”⁴⁹

Another major factor contributing to the pervasive impunity surrounding extrajudicial killings by police has been the ineffectiveness of the judicial system. The U.N Special Rapporteur in 2003 found that the criminal justice system did not possess the institutional capacity to deal with difficult cases of extrajudicial killings by police because, among other things, its proper functioning was “marred by a number of institutional obstacles and by a lack of resources.”⁵⁰ In particular, the Coroner’s Court, the court of first instance which most often handles homicides including police shooting cases, was plagued by structural flaws including, among others, lack of resources, inadequate use of technology, failure to issue warrant for witnesses and failure of investigative bodies to send the evidence to Court.⁵¹ Moreover, due to a perceived lack of impartiality, the judges themselves were often viewed as an “integral part of the flawed justice system that allows the Jamaican police to carry out killings with impunity.”⁵²

Finally, the Jamaican authorities utterly failed to protect witnesses of police shootings to preserve or encourage their testimony for trial. Witnesses were routinely harassed and intimidated by police officers.⁵³ Cases of witnesses disappearing or being killed are not

⁴³ 2001 AI Report, *supra* note 1, at 68.

⁴⁴ *Id.* at 53.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* See, e.g., case of Rasheed Williams in 2001 AI Appeals Report, *supra* note 20, at 16-17.

⁴⁸ See JFJ Impunity Report, *supra* note 1, at 6, 9-12; JFJ Reform Initiative Report, *supra* note 41, at 11-13; 2006 UN Report, *supra* note 1, ¶ 54.

⁴⁹ 2001 AI Report, *supra* note 1, at 57.

⁵⁰ 2003 UN Report, *supra* note 1, ¶ 70.

⁵¹ JFJ Reform Initiative Report, *supra* note 41, at 19-20.

⁵² JFJ Impunity Report, *supra* note 1, at 22.

⁵³ *Id.* at 13-14.

uncommon.⁵⁴ The intimidation of unprotected witnesses, along with the inadequate investigations just described, led repeatedly to a generalized failure on the part of the judiciary to prosecute police officials for a purported lack of evidence, despite clear and even overwhelming indicia of criminal responsibility.⁵⁵

B. Police Killings and Extrajudicial Executions: 2005-07

Police abuses and extrajudicial killings remain the human rights violations most reported by Jamaicans.⁵⁶ When Jamaicans for Justice presented its report, *Pattern of Impunity*, to the Inter-American Commission on Human Rights in 2004, it documented the longstanding practice of police killings and the clear pattern of impunity in existence for these abuses. Tragically, official statistics for 2005-2007 indicate that the already common practice of unlawful police killings that existed prior to 2004 has since reached endemic levels. A closer look at a number of recent cases confirms that a substantial percentage if not a majority of police shootings are in fact extrajudicial, arbitrary or summary executions.

Between 1999 and 2007, the number of incidents involving police shootings increased by nearly 600%.⁵⁷ Moreover, the number of fatalities resulting from these incidents has more than doubled since 2004. In 2007 alone, a record year for the third year in a row, 272 people were shot and killed by Jamaican police. Another 153 were shot and injured. On average, more than 50% of all police shootings in 2007 ended with at least one fatality. Even more astounding is that homicides by police in 2007 accounted for nearly 20% of all murders in Jamaica!⁵⁸ Nor had the pace of police killings slowed as 2008 began: five men were shot and killed by police in west Kingston on January 13, 2008.⁵⁹ What follows is a synopsis of half a dozen paradigmatic cases of police killings that occurred between 2005 and 2007 illustrating in greater detail the practice of extrajudicial executions by JCF agents.

1. Paradigmatic Cases

Several recent cases illustrate that the pattern of extra-judicial executions and excessive use of force committed by police officers continues. Through interviews and other research conducted during a December 2007 visit to Jamaica, George Washington University Law School's International Human Rights Clinic (GWIHRC) documented a half dozen cases of police killings since 2005.

a. Clifton Walters, Romario Bruce, Devine Parkinson and Orville Russell

At approximately 8:00 p.m. on December 15, 2007, Clifton Walters, Romario Bruce, Devine Parkinson and Orville Russell were pulled over by police officers as they drove through a

⁵⁴ Interview with Shawn Wilkinson, Staff Attorney, Jamaicans for Justice, in Kingston, Jamaica (Mar. 8, 2007).

⁵⁵ JFJ Impunity Report, *supra* note 1, at 13-14.

⁵⁶ Dionne Rose, *Cops the Main Culprit of Human Rights Violation*, JAMAICA GLEANER, Dec. 11, 2007.

⁵⁷ BSI Chart, *supra* note 2; GW/JFJ Chart, *supra* note 2.

⁵⁸ Under the reasonable assumption that official statistics placing the overall death toll in Jamaica at over 1,500 violent deaths in 2007 include killings committed by police. See Lewin Press Conference, *supra* note 4.

⁵⁹ *Prime Minister of Jamaica Calls for Tivoli Shooting Inquest*, *supra* note 9.

neighborhood in Bay Road, Westmoreland. Eyewitnesses recount how the police officers approached the vehicle and without warning opened fire on the victims who were still in the car, killing Clifton Walters, Romario Bruce and Devine Parkinson where they sat. Romario Bruce was fourteen years old; he was along for a ride with his older cousin Clifton Walters. Eyewitnesses reported that the fourth passenger, Orville Russell, managed to escape from the car after the shooting began. His body was discovered soon thereafter in a neighboring field. He had been beaten and tortured before being killed.⁶⁰ Orville's body arrived at the morgue fifteen minutes after those of the other victims, a black plastic bag still wrapped around his head.⁶¹ Eyewitness claim that police were waiting to ambush the four men, who had already been stopped, searched and released by police in Little London, Westmoreland.⁶² According to relatives of the victims, two of the young men, Devine Parkinson and Clifton Walters, were under investigation for an alleged rape; these family members have reason to believe this was the reason the police followed and executed their loved ones.⁶³

In contrast, the Constabulary Communications Network (CCN) reported that the police were conducting patrol duties when they signaled the driver of a car to stop. As the car stopped, four men, brandishing guns, purportedly alighted from the vehicle and opened fire.⁶⁴ The four occupants sustained gun shot wounds in the exchange and were taken to the hospital.⁶⁵ According to these reports, police searched the crime scene after the men had been shot and recovered a M1 rifle, a 40-caliber pistol and several cartridges.⁶⁶ Russell Parkinson, the father of Devine and the last person to see the victims before they were killed, insists that none of the young men had guns on them or in the car; he noted that they had been wearing vests so they would have been unable to conceal any weapons.⁶⁷ A mechanic who subsequently inspected the vehicle in which Clifton Walters, Romario Bruce, Devine Parkinson and Orville Russell were killed observed that there were bullet holes on the *inside* of the car. The vehicle has since disappeared.⁶⁸

b. Summerfa Dryden

⁶⁰ Interview with Jacqueline Bruce, Aunt of Clifton Walters and Romario Bruce; Nicole Walters, Sister of Clifton Walters and Cousin of Romario Bruce; Russell Parkinson, Father of Devine Parkinson; and Sharon Hobson, Mother of Orville Russell, in Kingston, Jamaica (Dec. 18, 2007). [hereinafter Interview with Relatives]. Photographs on file with GWIHRC depict signs of severe torture to Orville Russell's head and torso.

⁶¹ *Id.*

⁶² *Id.*; Jamaicans For Justice Complaint Form, Complainant Jacqueline Bruce regarding deaths of Clifton Walters, Romario Bruce, Devine Parkinson and Orville Russell, Dec. 17, 2007 (on file with GWIHRC).

⁶³ Interview with Relatives, *supra* note 60; Dalton Laing, *Four Killed in Westmoreland Identified*, JAMAICA GLEANER, Dec. 19, 2007 (confirming that Walters and Parkinson had been charged with rape by the Westmoreland Circuit Court).

⁶⁴ Horace Hines, *How Did They Really Die? BSI Probes Death of Westmoreland Four as Family Cries Foul*, JAMAICA OBSERVER, Dec. 20, 2007.

⁶⁵ Laing, *supra* note 63.

⁶⁶ Hines, *supra* note 64.

⁶⁷ Interview with Relatives, *supra* note 60; Hines, *supra* note 64.

⁶⁸ Interview with Relatives, *supra* note 60.

Summerfa Dryden's nude body was found in Bog Walk, St. Catherine, around 7:30 am on October 1, 2007 with what appeared to be a bullet wound.⁶⁹ Summerfa had been missing for two days. On the morning he disappeared, Summerfa had visited the home of his sister, Karen, and told her that a police officer had questioned him about their cousins, also with the surname Dryden, who were wanted for multiple murders.⁷⁰ The last person to see Summerfa alive was a taxi driver named "Yellow," who dropped him off near his house on the evening of September 29, between 7:30 and 8:00 pm. On October 3, 2007, Karen went to the police station after hearing on the news that an unidentified body had been found in a local field. At the station, she identified a bag of clothes, allegedly found beside the body, as belonging to her brother.

Detective Sergeant Winston Radcliff, the officer assigned to the case, informed her that the body had been found in such an advanced state of decomposition that a post-mortem had been ordered on the spot, after which the body was immediately buried.⁷¹ Yet the doctor whom the police claim performed the post-mortem at the site denies it.⁷² The police still consider the body to be officially unidentified because, according to Detective Radcliff, the victim's clothes cannot be used to make a positive identification.⁷³ Karen Dryden insists that the police have provided family members with conflicting information. She was told by a different police officer that spent gun shells were found near the body; still another told her in confidence that Summerfa was killed in a different location than where his body was found.⁷⁴ She also doubts the police's claim that the body could decompose so quickly in two days, despite Detective Radcliff's explanation that the rapid decomposition was due to exposure to the elements.⁷⁵

In Karen's opinion, her brother was executed by police seeking vengeance for the crimes committed by her cousins, also surnamed Dryden, who had successfully eluded the police. She believes he was sequestered soon after being dropped off at home. After the events described, Karen spoke with "Yellow," the taxi driver who last saw Summerfa alive, to encourage him to make a statement to investigators about her brother's last known whereabouts. However, she reports that "Yellow" was killed by police in early December, 2007 after being approached on suspicion of heavy weapons possession. She believes this was to keep him from talking to police.⁷⁶

c. Andre Thomas

Eighteen year-old Andre Thomas was shot and killed by police in Grants Pen, St. Andrew, on September 28, 2007 around 1:30 pm. Eyewitnesses described how police approached Andre while he was sitting with four other young men in front of a store. The other

⁶⁹ *Who Killed Summerfa Dryden? Family Suspect He Was Murdered by Police*, JAMAICA OBSERVER, Dec. 10, 2007 [hereinafter *Who Killed Summerfa*].

⁷⁰ Interview with Karen Dryden, Sister of Summerfa Dryden, in Kingston, Jamaica (Dec. 19, 2007) [hereinafter Interview with Ms. Dryden].

⁷¹ Letter from Karen Dryden, Sister of Summerfa Dryden, to Superintendent of Police, St. Catherine North (Oct. 15, 2007) (on file with GWIHRC).

⁷² *Who Killed Summerfa*, *supra* note 69.

⁷³ *Id.*

⁷⁴ Interview with Ms. Dryden, *supra* note 70.

⁷⁵ *Who Killed Summerfa*, *supra* note 69.

⁷⁶ Interview with Ms. Dryden, *supra* note 70.

young men fled, but Andre refused to leave. The police instructed him to go home, and when he refused, they began beating him with a board. Eyewitnesses recount how the police then shot him, once in the elbow and twice in the leg.⁷⁷ Filbert Thomas, Andre's father, went looking for his son after hearing shots fired in the neighborhood. When Mr. Thomas arrived at the scene, he found Andre lying on the ground; he recalls finding his son beaten and shot, but still alive.⁷⁸ The police showed him a gun they claimed they had taken from Andre. Mr. Thomas adamantly denies his son possessed such a weapon. Residents of Grants Pen subsequently staged demonstrations in protest for days in response to what they described as "cold-blooded murder."⁷⁹

When the police said they would take Andre to the hospital in their unmarked private car, Mr. Thomas repeatedly requested to accompany his son. They refused his repeated entreaties. When Filbert Thomas arrived at the hospital, the doctor informed him that his son had died from numerous gunshot wounds, including two bullet wounds to the chest and abdomen.⁸⁰ Mr. Thomas insists that his son had not left the scene with those injuries; the chest wounds could only have been inflicted by the police after they placed his son in their vehicle. Filbert Thomas and his other son were subsequently threatened with death by police agents for denouncing the killing and pursuing justice.⁸¹ He believes that Andre's death may have been politically motivated, because he and his family belonged to a community with a different political affiliation than the community from which the police perpetrators originated.⁸²

According to official accounts released soon after the incident occurred, police from nearby Constant Spring had been patrolling the Grants Pen area when they saw a group of men acting suspiciously.⁸³ The police allege that Andre Thomas had pulled a firearm and opened fire on them.⁸⁴ Initial reports by CCN claimed that the police took evasive action and fired, hitting the alleged gunman. Andre's body was discovered subsequently with gunshot wounds.⁸⁵ One of the officers claimed to have removed a Raven .25 semiautomatic pistol (with an erased serial number) and a magazine containing five .25 cartridges from Andre's hand after the shoot-out.⁸⁶ It was subsequently discovered, however, that the vehicle in which Andre had been transported had "disappeared," and was being allegedly repaired to cover evidence of the execution.⁸⁷ When

⁷⁷ *Grants Pen Residents Protest Killing*, JAMAICA GLEANER, Oct. 2, 2007 (based on statements from eyewitness "Ainey").

⁷⁸ Interview with Filbert Thomas, Father of Andre Thomas, in Kingston, Jamaica (Dec. 18, 2007) [hereinafter Interview with Mr. Thomas].

⁷⁹ Mark Beckford, *Four Cops Charged with Teen's Murder*, JAMAICA GLEANER, Dec. 29, 2007.

⁸⁰ Interview with Mr. Thomas, *supra* note 78; *Police Vehicle in Grants Pen Shooting to be Tested at Forensic Lab*, JAMAICA OBSERVER, Oct. 4, 2007.

⁸¹ Interview with Mr. Thomas, *supra* note 78.

⁸² *Id.* See also Interview with Nancy Anderson, Legal Advisor, The Independent Jamaica Council for Human Rights (IJCHR); Carolyn Gomes, Executive Director, Jamaicans for Justice (JFJ); and Devon Yetman, JFJ Board of Directors, in Kingston, Jamaica (Dec. 18, 2007) [hereinafter Interview with Experts].

⁸³ *Grants Pen Residents Protest Killing*, JAMAICA GLEANER, Oct. 2, 2007.

⁸⁴ Interview with Mr. Thomas, *supra* note 78; Glenroy Sinclair, *Police Puzzle – Arrest them! DPP Wants Cops Involved in Grants Pen Shooting Arrested*, JAMAICA GLEANER, Oct. 5, 2007.

⁸⁵ *Cops in Grants Pen Shooting Granted Bail*, JAMAICA GLEANER, Oct. 9, 2007; *Police Vehicle in Grants Pen Shooting to be Tested at Forensic Lab*, *supra* note 80.

⁸⁶ Interview with Mr. Thomas, *supra* note 78; *Grants Pen Residents Protest Killing*, *supra* note 83; Beckford, *supra* note 79.

⁸⁷ Beckford, *supra* note 79.

the four policemen disobeyed an order to turn the vehicle over to the Police High Command, they were arrested and charged with attempting to pervert the course of justice; two months later, they were charged with murder.⁸⁸

d. Jeff Smellie

At about 1:30 am on August 19, 2005, sixteen-year-old Jeff Smellie was shot and killed by the police while returning from Kingston Public Hospital, where he had just taken his grandmother, Jean Davis, for treatment of a stroke. A taxi driver had dropped off Jeff and his uncle, Trace Thomas, at a gully used by residents to enter and exit the community in Waterhouse where the victim lived. Mr. Thomas reported that he and his nephew were climbing up a ladder on the Washington Boulevard side of the gully when nearby police began firing at them.⁸⁹ Mr. Thomas jumped off the ladder; he and the taxi driver started shouting for the police to stop, saying they had just returned from the hospital, but the police continued shooting.⁹⁰ Jeff had continued to climb up the ladder and fell when he was hit by a bullet. He was taken to Kingston Public Hospital where he died while undergoing treatment.⁹¹

The CCN first reported that Jeff was among a group of three men who fired on a police patrol after they were ordered to park their white Toyota Corolla.⁹² The official release stated, “The driver pulled up, the men alighted and reportedly engaged the police in a shoot-out.”⁹³ Smellie, who according to police allegedly received gunshot wounds in the shoot-out, then ran into a gully. However, a bullet hole visible in the gully wall disputes this claim.⁹⁴ Superintendent Amos of the JCF later issued a statement clarifying that Jeff had been mistakenly killed following a shoot-out in the Waterhouse area.⁹⁵ Family members and eyewitnesses – including the victim’s uncle who was present – deny that such a shoot-out ever took place. Additionally, family members report that the police did not immediately visit the gully, conduct an extensive investigation, nor interview officers in connection with the shooting.⁹⁶

e. Dexter Hyatt

Dexter Hyatt was shot and killed by the police around 6:30 am on September 18, 2007 in Hampstead, St. Thomas “while he begged for his life with his hands in the air.”⁹⁷ On the morning of his killing, he was standing outside the gate of his house, preparing to travel a short distance, as he did daily, to care for his diabetic mother. Upon seeing two marked police vehicles

⁸⁸ *Id.*

⁸⁹ Vernon Davidson, *Was Calabar Student Shot Dead By Cops In Error Or Not?*, JAMAICA OBSERVER, Sept. 26, 2005.

⁹⁰ *Id.*

⁹¹ Claudienne Edwards, *Teen Shot By Police to be Buried on Sunday: Family Denies Claim He Was Killed in Shoot-out*, JAMAICA OBSERVER, Sept. 22, 2005.

⁹² *Police Shoot Teenager*, JAMAICA GLEANER, Aug. 21, 2005.

⁹³ Edwards, *supra* note 91.

⁹⁴ Interview with Christine Coombs, Mother of Jeff Smellie, in Kingston, Jamaica (Dec. 18, 2007) [hereinafter Interview with Ms. Coombs].

⁹⁵ Davidson, *supra* note 89.

⁹⁶ Interview with Ms. Coombs, *supra* note 94.

⁹⁷ Bev Melbourne, *The Day Hampstead’s Dreams Died: Community Left to Mourn Pregnant Teen, Labourer Allegedly Shot Dead by Police*, JAMAICA OBSERVER, Sept. 23, 2007.

in the area, he threw a marijuana joint he was smoking into the bushes. The police officers approached Dexter and asked him what he threw away; he refused to say. According to an eyewitness, the police officers, who were wearing masks concealing their faces and badge numbers, became more agitated in their effort to discover what Dexter had discarded and accused him of throwing away a gun.⁹⁸

Residents describe how the police began beating and kicking Dexter, knocking out two teeth.⁹⁹ A passerby saw Dexter with his hands in the air, and he shouted to her that the police were going to kill him. The police ordered her to leave, but she stood there, watching as the police ordered Dexter to put his hands down. When he refused, an officer shot him in the arm. The woman began to run and immediately heard two more shots¹⁰⁰. A witness heard the police tell another police officer to let him “bleed to death.”¹⁰¹ A resident saw when agents then fired two more shots into him “to finish[...] him off.”¹⁰² They placed him in a police vehicle and took him to Morant Bay Hospital where he was pronounced dead. Soon after the incident, which occurred in the early morning in public, a large crowd formed as residents heatedly protested the killing of Dexter Hyatt.

The officers responsible were not from the locality, but rather belonged to a mobile unit from Kingston in anticipation of pre-election ‘flare-ups.’¹⁰³ Police reports about what happened are conflicting. One alleges that gunmen engaged a police party in a gun battle, and that Dexter was found with gunshot wounds and clutching a 9mm Taurus revolver shortly thereafter.¹⁰⁴ In another report, the police officers claim that the killing was in self-defense during the course of a shoot-out. They produced a 9mm Taurus weapon that Dexter allegedly used to fire upon the officers after they accosted him.¹⁰⁵ Charles Hyatt, Dexter’s brother, insists that as a member of the Rastafarian faith, Dexter opposed violence and possessed no weapons. Dexter had two children, and eight-year old son and a three-year old daughter.

f. Tian Wolf

Tian Wolf’s last words to her aunt were, “Me not going anywhere far, me just going right yah so, me soon coming back.”¹⁰⁶ Tian was nineteen years old and three months pregnant when she was shot by police on the morning of September 18, 2007 in Hampstead, St. Thomas, only hours after the killing of Dexter Hyatt. That morning, she was awakened by a loud commotion. She walked outside to investigate and was standing on the fringes of the irate crowd that had gathered to protest the killing of Dexter Hyatt (see above).¹⁰⁷ The police first fired tear gas

⁹⁸ Interview with Charles Hyatt, Brother of Dexter Hyatt, in Kingston, Jamaica (Dec. 19, 2007) [hereinafter Interview with Mr. Hyatt].

⁹⁹ Melbourne, *supra* note 97.

¹⁰⁰ Jamaicans for Justice, Complaint Form, Complainant Charles Hyatt regarding Dexter Hyatt, Sept. 18, 2007 (on file with GWIHRC).

¹⁰¹ Interview with Mr. Hyatt, *supra* note 98.

¹⁰² Glenroy Sinclair, *Trials of a Community – Hampstead vs the Police*, JAMAICA GLEANER, Sept. 20, 2007.

¹⁰³ Interview with Mr. Hyatt, *supra* note 98.

¹⁰⁴ Melbourne, *supra* note 97.

¹⁰⁵ Walker, *supra* note 10.

¹⁰⁶ *Id.*

¹⁰⁷ Interview with Barbara Brown, Mother of Tian Wolf, in Kingston, Jamaica (Dec. 19, 2007).

canisters to disperse the demonstrators, and when that failed, they began firing shots into the crowd.¹⁰⁸ Tian's aunt, Barbara Smith, smelled tear gas, heard shots, and saw people running for cover.¹⁰⁹ She met Tiane as the young woman ran through the gate, clutching her bleeding stomach. Citizens tried to place her in the police vehicle for transport to the hospital, but the police told them to remove her.¹¹⁰ Police claim that they fired into the group of protesters after stones were thrown and shots fired at them.¹¹¹ But National Security Minister Derrick Smith condemned the shooting and called the police behavior "disgraceful."¹¹²

g. Lance Zab¹¹³

On the morning of August 28, 2007, fourteen-year-old Lance Zab was eating his breakfast in front of a shop on Hill Avenue, Olympic Way in Kingston when the police approached him and a man sitting next to him. The man fled, but Lance did not. According to an eyewitness, the policemen held him up and said "What you up to?" Then one officer shot Lance in the stomach and foot. He fell to the ground and begged not to be killed. A policeman picked him up, threw him against the police car and shot the boy in the head. Lance's aunt, Janet Small, was prevented from coming to the scene because the police were firing shots to disperse the angry crowd that gathered shortly after the killing.¹¹⁴ After the police left, Lance's cousin was allowed to clean up the site, including wrapping up pieces of Lance's skull.¹¹⁵ Police alleged that Lance was among a group of gunmen who engaged the police in a shootout.¹¹⁶ They claim to have recovered a gun belonging to Lance from the scene of the shoot-out. The same police, who were from the neighboring Bayside station, had killed another person, a suspected murderer, earlier that day.

2. Concluding Observations

The foregoing establishes that the widespread practice of fatal shootings and extra-judicial executions by Jamaican police documented through 2004 continues unabated to the present day.¹¹⁷ In fact, our findings indicate that the situation has gotten much worse. The statistics for 2007 confirm that what had been a borderline human rights emergency in 2000 had become, by early 2008, a full-blown humanitarian crisis. On average, at least one Jamaican was shot and injured or killed every day of 2007 as a result of a police shooting. By 2007, in terms of homicides per capita, Jamaica was "the world's most murderous country,"¹¹⁸ but given that nearly 20% - almost a fifth - of all killings in Jamaica were committed by JCF agents, many of

¹⁰⁸ *Id.*; *Expect More Spot Checks*, JAMAICA GLEANER, Sept. 20, 2007.

¹⁰⁹ Walker, *supra* note 10.

¹¹⁰ Post-mortem Examination Report, Tiane Wolfe, Sept. 27, 2007.

¹¹¹ Melbourne, *supra* note 97.

¹¹² Sinclair, *supra* note 102.

¹¹³ *See also* Introduction.

¹¹⁴ Interview with Janet Small, Aunt of Lance Zab, in Kingston, Jamaica, Dec. 18, 2007 [hereinafter Interview with Ms. Small].

¹¹⁵ *Id.*

¹¹⁶ Karyl Walker, *Police Kills 15-y-o Schoolboy in Alleged Shootout*, JAMAICA OBSERVER, Aug. 29, 2007.

¹¹⁷ *See supra* section II.A [Background and Context].

¹¹⁸ THE ECONOMIST, *supra* note 4.

them extrajudicial executions, it would appear that the police are as much a part of the problem as they are part of the solution. Public opinion in Jamaica echoes this conclusion.¹¹⁹

Not only is this practice more widespread than ever, it appears now to be systematic as well. As demonstrated by the paradigmatic cases, the upsurge in unlawful killings maintains many of the common characteristics observed in previous reference periods.¹²⁰ These include targeting victims – often unarmed young men or boys – who pose no threat to police, and incapacitating them before shooting them dead. The victims tend to live in marginal or “inner-city” neighborhoods, where political tensions run high, and belong to lower socio-economic sectors. Several of the persons interviewed for this Report expressed frustration at the fact that their loved ones had been victimized for this reason. The likely motives behind the killings range from reckless or negligent homicides, as in the cases of Jeff Smellie and Tian Wolf, to calculated vigilantism, as with Devine Parkinson, Clifton Walters, and Summerfa Dryden. Corruption and political polarization are sometimes cited as well, exemplified by the execution of Andre Thomas.

Jamaicans have grown weary of hearing the same, dubious “official story” repeated in case after case. In almost all instances, the explanation given by police to deflect prosecution is that a “shoot-out” occurred in which police returned fire while defending themselves from armed individuals. Guns are repeatedly “found” at the scene of the shooting, purportedly belonging to the victim(s), who in 2007 included teenage school boys (Lance Zab, Jeff Smellie, Romario Bruce) and pacifist Rastafarians (Dexter Hyatt). Yet no police are ever injured or killed in these constant gun-battles, which residents and eyewitnesses frequently deny ever happened. On the balance of the evidence, and in light of historical context, it is far more likely that in these types of fatal police shootings an extrajudicial, arbitrary or summary execution took place instead. What is certain, as explained in the next section, is that inadequate police investigations and pervasive impunity guarantee that the vast majority of controversial police killings remain unresolved.

C. Update of a Pattern of Impunity

In this third and final section of Part II, we examine the recent functioning of the authorities, mechanisms, and procedures charged under Jamaican law with ensuring that police who exceed their legal mandate in the use of use lethal force are held accountable. Special attention is paid to describing progress in those areas of strategic importance identified in previous reports by Jamaican and international experts, namely, police investigations; independent civilian oversight; prosecutions, and the judicial process. The issue of redress for victims of fatal police shootings is also addressed. In 2004, the JFJ Report *Pattern of Impunity* concluded that there was a clear pattern of police impunity for killings of civilians due to a combination of factors.¹²¹ These factors are referenced in each of the subsections below, and contrasted with the more recent information available to update progress in the respective areas under study.

¹¹⁹ JFJ Survey, *supra* note 12. Nearly 50% of Jamaicans expressed their belief that the police use excessive force; the respondents also noted their belief that, on average, 62% of Jamaican police officers were corrupt.

¹²⁰ See *supra* section II.A [Background and Context].

¹²¹ JFJ Impunity Report, *supra* note 1, at 3.

Overall, our research suggests that in situations of fatal police shootings since 2004, the pertinent investigative and judicial processes continue to be dysfunctional, showing little if any improvement. Certainly the statistics available paint a bleak picture. As noted already, “from October 1999 to February 2006, not a single police officer was found guilty on charges related to the *fatal* use of force, although more than 700 persons had been killed by the police during these six years.”¹²² The same international expert also expressed concern that “while the number of persons shot by the police reached a new all-time high in the year 2005, the inexcusable situation of nearly complete impunity for these killings persist[ed], reinforcing the tendency of law enforcement officials to substitute extrajudicial executions for investigation and criminal procedure.”¹²³ Not until 2006 was a police officer convicted of murder.¹²⁴ To illustrate this pattern of impunity, we begin with a case study of the high-profile killings that took place in Kraal, Clarendon, in May, 200

*1. The Killings of Kraal, Clarendon: A Case Study in Impunity*¹²⁵

On May 7, 2003 around 5:30 pm, members of the Jamaican police force’s now disbanded Crime Management Unit (CMU) killed Angela Richards, Lewena Thompson, Kirk Gordon and Matthew James at Angela’s home in Kraal, Clarendon. SSP Reneto Adams, then head of CMU, was in Kraal reportedly looking for a gang member, Bashington Douglas, when he reportedly received information that Douglas was at Angela Richards’ property.

The police officers said that they were “greeted by gunfire” when they arrived at the property and during the shoot-out the four victims were killed. According to members of the community, however, an unmarked white bus with policemen aboard was driven to the gate of the premises with no opposition. Police got out and began firing at a group of persons on the veranda. Witnesses recount how police officers cornered and shot two men.¹²⁶ When the gunfire started, Angela, Lewena, and Lewena’s nine-year-old daughter, Shanice, ran into the bedroom and hid underneath the bed. They heard more gunshots, and then the police yelled for them to come out from under the bed. A policeman grabbed Shanice from Angela’s lap and took her outside, telling her to wait outside under a tree for her mother. As the little girl was being led from the scene, she heard her mother say, “Please no bada kill me.” Then she heard gunshots and saw the police lifting the body of her mother out of the house.¹²⁷

Donnovan Thompson, a police officer and fellow CMU member, entered the house and saw a woman with a bloodied chest and a dead man lying on the floor. He noticed another man alive and sitting on the floor. Donovan walked over to inspect the injured individual, who was unarmed. He then heard gunshots and witnessed as the man was killed in front of him. Other eyewitnesses and forensic experts support Donovan’s description of an extra-judicial killing.

¹²² 2006 UN Report, *supra* note 1, ¶ 47.

¹²³ *Id.* ¶ 75.

¹²⁴ *See* Annex II, GW/JFJ Chart.

¹²⁵ Jamaicans for Justice, *The Killings of Kraal, Clarendon: Highlighting Patterns of Impunity in Jamaica*, Nov. 17, 2007 (attached as Annex III) [hereinafter *Kraal Killings Report*].

¹²⁶ JFJ Impunity Report, *supra* note 1.

¹²⁷ *Id.*

Experts who observed and reviewed the post-mortem autopsies concluded that the victims' bullet wounds indicated they were all shot at close range. Angela Richard's gunshot wounds appeared to have occurred as she was sitting down. Additionally, it appeared that Matthew James' arms were raised when he was fatally shot.

Eventually six officers were charged – SSP Reneto Adams, Corporal Patrick Coke, Constables Devon Bernard, Shane Lyons, Roderick Collier, and Lenford Gordon. The case went to the Jamaican Supreme Court in November 2005. In December 2005, all six were found not guilty, giving rise to allegations of judicial impropriety.

The Kraal case highlights several areas of concern in the Jamaican justice system, beginning with deficiencies in securing the crime scene and evidence. Constable Tyrone Brown, a CMU officer, testified that he and another officer, Corporal Ramsey, had heard over the radio that CMU was under fire. According to his testimony, they and other officers mobilized not to the scene but rather to a residence far from Kraal, where they spoke with a man who gave them a firearm that they placed in a bag. On the way to Kraal, the officers stopped again. One of the officers fired the weapon and collected the spent shells, placing both the shells and the firearm into a bag. Upon arrival at Kraal, that same officer gave the bag to Adams, who placed the gun on the ground and scattered shells on the floor. Only then did Adams permit the crime photographer to take pictures of the scene.

Other anomalies, mentioned briefly below, were verified as well. All of the events described were established as fact in the judicial record, due in great part to the work of foreign police agents from Scotland Yard brought in to reinforce the investigation:¹²⁸

- The crime scene was not secured, and non-authorized persons were permitted to enter the house where the killings took place within 24 hours of the events.
- Firearms found at the scene were not dusted for fingerprints.
- Eyewitnesses saw police officers remove the four bodies from the house and place them into the police van, improperly altering the crime scene investigation. A forensic scientist confirmed that it appeared likely that at least one body was dragged.
- No pictures of the persons killed were taken at the crime scene.
- The JCF's Bureau of Special Investigations (BSI) did not arrive on the scene until the following day, at which point all of the bodies had been removed.¹²⁹
- The hands of five of the accused were swabbed for gunpowder residue, but Reneto Adams' hands were never tested.
- Autopsies were conducted over two weeks after the incident; the bodies had begun to decompose because they had been repeatedly placed in and removed from coolers during the two week lapse.
- A former BSI police sergeant collected firearms from CMU; however, when he later went to collect a rifle found at the scene, he discovered it disassembled. He testified that it is possible to replace rifle parts with those from another weapon.

¹²⁸ Annex III, Kraal Killings Report, *supra* note 125.

¹²⁹ *Cops Kill 4 – Crawl Residents Deny Crime Management Unit's Account*, JAMAICA GLEANER, May 9, 2003, cited in JFJ Impunity Report, *supra* note 1, at 6.

- Ballistics tests were not conducted on a gun found at the scene until more than two years after the incident.

The Kraal case similarly reveals shortcomings in the judicial process in Jamaica, such as long trial delays.¹³⁰ The incident occurred in May 2003, but the officers were not charged until April 2004, due largely to public and international pressure. The case was brought to court at least ten times over the course of eighteen months before it finally went to trial in October 2005. Due to the delay, witnesses's testimony was compromised, and Joshua Black, an important witness who worked in the JCF's Scene of Crime Division, was killed in the interim.

Prosecutorial and judicial conduct was questionable in several other important respects.¹³¹ Prosecutors failed to bring key witnesses to the stand to testify; the bases for these decisions are unclear. Further, it appeared that some jurors may have had conflicts of interest due to their proximity to the parties' attorneys. During his summary, Chief Justice Wolfe emphasized the weaknesses in the testimony of many of the witnesses for the prosecution. For instance, regarding the testimony of Shanice Stoddart, he pointed out that she had admitted to being "confused," quoting her out of context and arguably weakening her damning evidence. In addition, the Chief Justice attended a cocktail party during the course of the Kraal trial that was also attended by the Director of Public Prosecutions, many of the defense lawyers in the case, and the primary defendant, Reneto Adams.¹³²

2. *Police Investigations*¹³³

This subsection provides an update on police investigations since JFJ's *Pattern of Impunity* report, which noted that almost all such investigations of fatal police shootings by the JCF's Bureau of Special Investigations (BSI) were perfunctory and inadequate, thus failing to meet basic international standards.¹³⁴ Our research confirms that there has been no progress in any of the critical areas related to police investigations, namely, preservation of crime scenes and collection of evidence; monitoring of weapons and munitions; ballistics and forensics; as well as witness protection. One exception may be that of police training. During our investigation, high-ranking police and government officials emphasized that unresolved deficiencies in police investigations are central to the problem of prevailing impunity.

This predicament gave rise to Prime Minister Golding's initiative to establish an independent civilian investigative commission. As noted in the Introduction, efforts are well underway in Parliament to create a "single, independent authority to investigate instances of abuse by members of the security forces."¹³⁵ The civilian inquiry commission proposed by the Government would have several characteristics designed to ensure its independence and address many of the issues discussed in this subsection. Among other repercussions, it would supplant BSI in certain key aspects, such as

¹³⁰ Annex III, Kraal Killings Report, *supra* note 125, at 4-5.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Most of the information provided in this section is drawn from interviews with high ranking police and government officials, as well as Jamaican experts. In some instances, the identity of the source is withheld to protect confidentiality.

¹³⁴ JFJ Impunity Report, *supra* note 1, at 4.

¹³⁵ Ministry of Justice Press Statement, *supra* note 11.

control of the crime scene and direction of the initial investigation.¹³⁶ This proposal is described in greater detail below.

a. Bureau of Special Investigations (BSI)

The BSI, a division of the Jamaican Constabulary Force (JCF), is responsible for investigating all cases involving the discharge of firearms by the police, especially those resulting in injury or death. All evidence suggests that the BSI is overworked and overwhelmed. Over 1400 investigations of police shootings since 1999 have *not* yet been completed, over 40% of the total number of incidents recorded.¹³⁷ The BSI was intended to have a professional staff of 60, but operates with 23, only 2 of whom are senior officers. When a police shootings occur, an administrative review must take place within 48 hours at the local police base of the perpetrator. The objective of these reviews is to determine whether any rules have been broken and to recommend some response, such as training, supervision or suspension from duties. A BSI investigator is obligated to be present at these administrative reviews, but often is not. This is frequently due to the distances involved in sending BSI agents from their centralized headquarters to the regions where the incidents take place.

BSI investigations should be completed in six weeks, but most are not. When police shootings occur in their region, the police division commanders are obligated to report them immediately to the BSI. Nonetheless, this does not always occur in a timely manner; sometimes it does not happen at all. Due to the delayed reporting, as well as the lack of available investigators, BSI investigators may not arrive at the scene of a police shooting until two, three or more days after the event. This delay provides an opportunity for evidence to be contaminated or removed, as discussed in more detail below. Moreover, BSI officials charged with carrying out the investigation will often face resistance from local police agents – sometimes the very agents involved in the shooting – who under the current rules are responsible for securing the scene and conducting the initial investigation. These issues impede the timely initiation of effective investigations.

Once assigned to a case, BSI agents must follow a number of mandatory procedures, which include visiting the morgue, reviewing firearm and munitions records, interviewing the policemen involved, seizing of guns, interviewing witnesses, conducting forensics tests, attending the post-mortem, and establishing a chain of custody for evidence. However, BSI investigators face numerous challenges in discharging their duties. For instance, the perpetrating police officers often will not cooperate with BSI officers attempting to take a statement. According to BSI sources, this is because regular police do not view BSI investigators “as one of them.” Deficient resources, especially with respect to forensics and ballistics, further hamper efforts by the BSI to collect evidence (see below). This grave situation is compounded by the

¹³⁶ Interview with Dorothy Lightbourne, Minister of Justice and Attorney General, in Kingston, Jamaica, Dec. 20, 2007 [hereinafter Interview with Attorney General]. While the exact inter-relationship between the two is still unclear, the configuration of the new civilian investigative body proposed by the government would give its staff the equivalent rank of a police constable, and charge them with the authority to seize and control crime scenes from the JCF and the BSI.

¹³⁷ See Annex II, GW/JFJ Chart, *supra* note 2. BSI has completed investigations in only about half of *fatal* police shooting incidents. Since 1999, there have been 1,273 fatal police shooting incidents. At the end of 2007, BSI had only completed investigations into 678 of these fatal cases.

fact that there are no legal sanctions for police who fail to cooperate with a BSI investigation, although infractions of professional standards in theory can give rise to disciplinary sanctions.

Even so, some advances are worth noting. In regard to the Andre Thomas slaying, the BSI investigation led to the four policemen responsible being charged with murder.¹³⁸ And after the killings of Dexter Hyatt and Tian Wolf, another high-profile case that generated widespread condemnation of police conduct, the investigation seemed to move swiftly in the beginning stages. The BSI investigators swabbed the perpetrating officers' hands, seized their firearms for ballistics testing, and collected thirteen statements from eyewitnesses.¹³⁹ Then Commissioner of Police Lucius Thomas ordered a full probe into the incidents and the responsible police officers were removed from front-line duty.¹⁴⁰

b. Preservation of Crime Scene and Evidence

With respect to the crucial initial stage of crime scene and evidence preservation, JFJ in *Pattern of Impunity* concluded that the failure to safeguard the scene of a police shooting and the resulting "corruption of evidence" hindered the ability to undertake thorough investigations.¹⁴¹ It noted that "[o]ne of the most flagrant violations during the preliminary investigative procedure [was] the failure on the part of the JCF to preserve and collect evidence," especially forensic evidence.¹⁴² The report indicated that the removal of bodies and other evidence from the scene prior to investigation by independent authorities was a significant problem.¹⁴³

Our research confirms that these very issues continue to plague police investigations. For example, evidence that should be preserved for forensic examination is corrupted or destroyed because the crime scene is not properly secured or investigated. When Karen Dryden inquired at the local police station about the unidentified body she believed to be her brother, Summerfa, Detective Sergeant Radcliff informed her that the victim's body had been summarily buried on the spot, without a confirmed post-mortem.¹⁴⁴ It is unclear what if any evidence was collected at the scene, other than a bag of clothes belonging to the victim, despite clear indicia of foul-play. It seems the police often fail to preserve and collect evidence, especially forensic evidence, which will aid in determining whether police excesses occurred. After Lance Zab was killed, not the police but the victim's young cousin wrapped up the pieces of his shattered skull left behind and presented them to the BSI.¹⁴⁵ While a Professional Standards Branch exists to regulate disciplinary infractions, sanctions are generally not applied or enforced for botched crime scene or initial investigations.¹⁴⁶

High-ranking police and government officials interviewed recognized the various problems presented by having crime scenes controlled by local police, who often do not have the

¹³⁸ Beckford, *supra* note 79. The trial is set for May 14, 2008.

¹³⁹ Walker, *supra* note 10.

¹⁴⁰ *Id.*

¹⁴¹ JFJ Impunity Report, *supra* note 1, at 5-6.

¹⁴² *Id.* at 9-10.

¹⁴³ *Id.* at 6-7.

¹⁴⁴ Interview with Ms. Dryden, *supra* note 70; *see also*, *Who Killed Summerfa*, *supra* note 69.

¹⁴⁵ Interview with Ms. Small, *supra* note 114.

¹⁴⁶ Interview with high ranking police official, *supra* note 133.

technical capacity or impartiality required to discharge that duty effectively. Often it is the same perpetrators, because they are the first on the scene, who are responsible for securing it, collecting evidence, and securing the weapons fired or found. This can lead to difficulties in establishing a chain of custody for key evidence, such as firearms, casings, pictures and witness statements. Similar concerns were raised about the effectiveness of BSI investigators, who often arrive late to crime scenes, as well as their ability to secure the cooperation of local police. As a result, government sources recognized that there were “one or two” cases lost in the courts due to the failure to adequately establish an evidentiary chain of custody.¹⁴⁷ In general, crime scenes are rarely secured or controlled by police agents, who do not receive sufficient training for this purpose, thus leaving the scene open to members of the public and relatives to disrupt.

It is for these reasons that the specially trained civilian investigators in the Government’s proposed independent inquiry commission would have full authority to immediately take over the scene of a fatal police shooting from local police *and* the BSI, as well as to direct the initial investigation in every respect.¹⁴⁸ To address the lack of accountability for failures in investigations, a new measure has also been included in the Government’s Parliamentary initiative that would hold “senior” local police officials accountable for the actions of their subordinates if they fail to properly preserve the crime scene until the civilian investigators arrive.¹⁴⁹

c. Monitoring Weapons, Munitions, and Evidence

Regarding the monitoring of weapons and munitions, JFJ in *Pattern of Impunity* concluded that there were severe deficiencies in the recovery of guns and bullets from crime scenes. It noted that officers failed to account for, and were generally not compelled to account for, weapons or bullets discharged in a police shooting. Additionally, officers that did turn over the weapons purportedly used in a police shooting would do so days after the incident.¹⁵⁰ The JFJ cited this poor ballistics testing as a practice that further contributed to police impunity.

The pattern of poor investigative procedure concerning the collection of guns and bullets from scenes of police shootings remains unchanged. At the local level, police stations are required to maintain records of firearms, including decommissioned, confiscated and official firearms, as well as the number of bullets issue to police, number of rounds fired during shootings, etc. The commanding officer of the station is responsible for registering all of this information in a station “diary”. However, in practice, police officers do not consistently account for the bullets discharged by their colleagues despite involving the deadly use of force against civilians. Often the implicated officers do not turn over their official weapons until days after the incident. Off-duty police carry and use their weapons with little apparent control or consequences. Disciplinary action is possible where a station diary is not properly maintained or where weapons and munitions are not properly accounted for, but such sanctions are rarely, if

¹⁴⁷ Interview with high ranking police official, *supra* note 133.

¹⁴⁸ Interview with Attorney General, *supra* note 136.

¹⁴⁹ Interview with high ranking government official, *supra* note 133.

¹⁵⁰ JFJ Impunity Report, *supra* note 1, at 11-12.

ever, applied. Additionally, poor ballistics testing has contributed to the impunity of police officers of cases in which police officers have shot and killed civilians.¹⁵¹

Then there is the issue of the manipulation of evidence by police to cover their tracks. As noted already, police officers frequently claim to have “recovered” weapons from the scenes of fatal police shootings that had been wielded by the victims. Sometimes direct evidence arises to suggest or demonstrate that these weapons were in fact planted by the police themselves, as in the Kraal case. Frequently, eyewitness testimony rebuts claims of a gun battle between police and victims; such testimony, for example, debunked the outrageous police allegations of armed confrontation in the cases of eighteen-year-old Andre Thomas, fourteen-year-old Lance Zab, and fourteen-year-old Romario Bruce. In many instances, where guns are “recovered” from the scene of a police killing, officers fail to properly preserve or check for fingerprints on the weapons allegedly used by victims.¹⁵² Occasionally, the police confirm that the illegal guns are sent to the forensic lab for ballistics tests, as in the case of Dexter Hyatt.¹⁵³

The manipulation of evidence to shield police wrongdoing from investigation and prosecution extends beyond just firearms. In one of the more egregious examples of this practice, the police vehicle used to transport Andre Thomas to the hospital where he died “mysteriously turned up” five days after the Police High Command gave instructions for it to be turned over the police. A senior investigator stated, “We suspect it was taken to a private garage where it was tampered with.”¹⁵⁴ Similarly, a mechanic who saw the car in which Clifton Walters, Romario Bruce, Devine Parkinson and Orville Russell were killed noticed that there were bullet holes on the *inside* of the car, disproving the police officers’ allegation that the men emerged from the car with their weapons and opened fire. That vehicle has since disappeared.¹⁵⁵ When added to the practice of intimidating or even disappearing witnesses to police shootings, the difficulty of prosecuting such cases becomes even more apparent.

d. Forensics and Witness Protection

Regarding the conduction of forensic testing, JFJ in *Pattern of Impunity* observed that Jamaican government forensic procedures did not meet international standards. The JCF failed to preserve and collect forensic evidence, leading to contamination and decomposition of crucial evidence.¹⁵⁶ Autopsies, frequently performed weeks after the shooting, were not thoroughly conducted.¹⁵⁷ Finally, the report questioned the independence of the Department of Forensic Study, which is under the direct control of the Ministry of National Security, in investigating police shootings. Bolstering the appearance of partiality was the Government’s reluctance at the time to allow independent pathologists into examinations.¹⁵⁸

¹⁵¹ Interview with high ranking police official, *supra* note 133; *see also* R v Everaldo Robinson (Jury in the Home Circuit Court returned “not guilty” verdict on Feb. 14, 2008).

¹⁵² *See* JFJ Reform Initiative Report, *supra* note 41, at 12 (discussing the Sandra Sewell and Gayon Alcott case in the Coroner’s Court of Kingston/St. Andrew).

¹⁵³ Melbourne, *supra* note 97.

¹⁵⁴ *Intensive Testing for Vehicle Used in Fatal Shooting*, JAMAICA GLEANER, Oct. 5, 2007.

¹⁵⁵ Interview with Relatives, *supra* note 60.

¹⁵⁶ JFJ Impunity Report, *supra* note 1, at 9.

¹⁵⁷ *Id.* at 17-19.

¹⁵⁸ *Id.* at 19-20. Independent observers are now allowed to attend forensic examinations.

Our investigation revealed that, aside from the willingness to allow independent observers to be present, very little has changed in this situation. In fact, the information we collected strongly suggests that the dire state of forensic investigation in Jamaica continues to this day. Official sources noted that insufficient forensic resources hampered proper and timely investigations. They complained that there was no public morgue or even an x-ray machine available to police investigators (used for identifying bullets lodged in corpses for extraction). In the entire country there is only one ballistics expert.¹⁵⁹ As the case of Summerfa Dryden illustrates, the practice of autopsies on police victims continues to be inadequate at best. Even where post-mortems are carried out, they continue to be seriously deficient, not least because cadavers are regularly buried with un-extracted bullets.¹⁶⁰ The police themselves acknowledge that they need more and better pathologists. In recognition of this fundamental problem, the Government's proposal for a civilian commission of inquiry includes measures to create a state of the art public forensic laboratory sufficient enough to adequately support the work of this new investigative body.¹⁶¹

Government officials also recognized the continuing challenges faced in providing protection to witnesses of unlawful police killings.¹⁶² As has long been the case, witnesses are fearful of collaboration with police investigators due to a well-founded fear of reprisals, including death threats. Several of the victims' relatives interviewed for this Report expressed a fear of retaliation for pursuing justice, and pointed to prior cases where witnesses or relatives had been killed under similar circumstances.¹⁶³ Indeed, Filbert Thomas and his remaining son were threatened by police agents on the street, a week after agents had killed his son Andre. Mr. Thomas recounts how the officer identified him as the father of the slain boy, and threatened him with the same treatment if he did not desist from pursuing justice.¹⁶⁴ Another victim's mother reported that she had been offered a bribe of \$150,000 and was intimidated by police to prevent her from pursuing a case.¹⁶⁵ In the case of Summerfa Dryden, "Yellow," the taxi driver who was the last person to see the victims alive, and who feared for his life, was reportedly killed by the police in December 2007.¹⁶⁶

e. Police Training

¹⁵⁹ Interview with high ranking police official, *supra* note 133.

¹⁶⁰ *Id.*

¹⁶¹ Interview with Attorney General, *supra* note 136.

¹⁶² Interview with high ranking police official, *supra* note 133; *see also* <http://www.irb-cjsr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=449792>.

¹⁶³ Email from Yvonne McCalla-Sobers, Human Rights Lobbyist, to Jamaicans for Justice (Aug. 19, 2004, 07:34 PM, EST) (on file with GWIHRC). The case of 14-year-old Amanie Wedderburn, shot and killed on May 2, 2003 by Jamaican police officers, serves as a notable example. On June 3, 2004, the Westmoreland Coroner's Court ruled that the implicated officer would face criminal charges for Amanie's death. On August 18, 2004, Amanie's uncle, Eric Wedderburn, who had received death threats due to his unflinching commitment to the pursuit of justice, was shot and killed outside his home. The circumstances surrounding his death, in addition to the intimidation of other witnesses in the same case, have sent a clear dissuasive message to family members and witnesses in subsequent cases.

¹⁶⁴ Interview with Mr. Thomas, *supra* note 80.

¹⁶⁵ Barbara Gayle, *Janice Allen Case – Lawyer Says Client Being Harassed*, JAMAICA GLEANER, June 7, 2006.

¹⁶⁶ Interview with Ms. Dryden, *supra* note 70.

The *Pattern of Impunity* report did not specifically address the issue of police training. The JCF’s “Human Rights and Police Use of Force and Firearms Policy” suggests adequate standards on paper. This document sets forth guidelines on the use of force and firearms which “incorporate the fundamental rights and obligations enshrined in ... international human rights instruments.”¹⁶⁷ It notes that “any use of firearms must be in accordance with force instructions and training. Only in the most extreme circumstances, where life is endangered or there is risk of serious injury, may the use of lethal force be justifiable.”¹⁶⁸ The policy also establishes that lethal force may only be used to defend oneself or others and “then only where strictly necessary.”¹⁶⁹ However, the document contains no reference to monitoring or sanctioning mechanisms for enforcing transgressions of its provisions.

Additionally, it appears that cadets at the JCF’s Police Academy receive some instruction in basic human rights and related norms. An initiative by the Police Academy to adopt a new training manual for cadets, taken in conjunction with the Independent Jamaican Council for Human Rights (IJCHR), is also encouraging.¹⁷⁰ The JCF’s Superintendent in a related vein commented recently that, in conjunction with established human rights and ethical guidelines, active police officers are trained in principles on the use of force through the JCF’s yearly training program.¹⁷¹ But even recognizing that some training does take place, little or no follow-up monitoring or support of trained police cadets or officers in the field occurs. Nancy Anderson, ICHR Legal Advisor, explained how instead most young police officers are “re-trained” by veteran cops on the street, where the “fight fire with fire” mentality prevails.¹⁷²

Adequate supervision of active police officers, particularly with respect to the standards for use of force and firearms, is lacking. There does not appear to be any accountability for even serious transgressions of the “Human Rights and Firearms Policy” or the professional standards that govern police action.¹⁷³ The lack of an effective monitoring system allows corruption and political affiliations to predominate over professional standards among many police officers. The notorious political strife between members of rival political parties in Jamaica pervades the police force, negatively affecting police conduct and accountability. For example, in the case of Andre Thomas, circumstances suggest that whereas the local Grants Pen police enjoyed good relations with locals, a roving unit from nearby Constant Spring arrived and killed Andre it is said simply because he was from a community with a different political affiliation.¹⁷⁴

3. Independent Investigations

The Police Public Complaints Authority (PPCA) is the external independent civilian body currently responsible for investigating complaints against the police. JFJ in *Pattern of Impunity* observed that the PPCA refrained from making full use of its powers when conducting

¹⁶⁷ Jamaica Constabulary Force, Human Rights and Police Use of Force and Firearms Policy, ¶ 2 (on file with GWIHRC) [hereinafter JCF Firearms Policy].

¹⁶⁸ *Id.* at ¶ 52.

¹⁶⁹ *Id.* at ¶ 53.

¹⁷⁰ Interview with Experts, *supra* note 82.

¹⁷¹ Gareth Manning, *Police Receive Adequate Training*, JAMAICAN GLEANER, Sept. 30, 2007.

¹⁷² Interview with Experts, *supra* note 82.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

investigations, which it initiated in only a small fraction of cases.¹⁷⁵ The report noted also that the PPCA lacked adequate resources, as well as the authority to obtain statements from suspects and witnesses.¹⁷⁶ Government sources explained that the PPCA often relies on the BSI investigations, which suffers from the shortcoming described above. For these reasons, Jamaicans for Justice sent notice in September 2006 informing the PPCA that it would no longer refer clients to this oversight body.¹⁷⁷

As discussed already, Justice Minister and Attorney General Dorothy Lightbourne has presented to Cabinet a proposal for a civilian “independent commission” of police inquiry to replace the PPCA. This initiative represents the Government’s principal response to the problem of police killings and impunity. Under the new proposal, investigators would be civilians who would receive specialized training in forensics and ballistics; they would also possess the authority to take over a crime scene and direct the initial investigation.¹⁷⁸ Other highlights of the new proposal include obligatory disciplinary sanctions to be imposed for non-reporting of police abuses and other violations. According to the Minister of Justice, the civilian independent commission proposed by the Government would be wholly independent from the BSI, which would nonetheless continue to operate. In the Government’s view, the new commission would have the following additional characteristics:

- It would be decentralized and present in every department; the five commissioners would be distributed around the country to each of the 5 police divisions.
- There would be a 24 hour hotline for reporting police abuses.
- Investigators would be civilians with no police background, but would have the authority of police constables.
- It would present quarterly reports to a Parliamentary Commission.
- Victims and their family members would be kept informed and have access to the investigations; they could participate in hearings and receive legal assistance.
- Disciplinary sanctions ordered by the commission would be obligatory and would have to be complied with; such sanctions could be imposed for non-reporting of violations.
- After carrying out its investigation, the commission could recommend that the DPP prosecute the accused officers, or order disciplinary sanctions; should the DPP refuse to act on the commission’s recommendation for prosecution, Parliament could demand a hearing at which the DPP would have to give his or her reasons for not doing so.
- The government would look to international cooperation for assistance in financing the commission, as well as training its investigative personnel.

As of this writing, the government’s proposal for an independent civilian inquiry commission was on a fast-track schedule in the Parliament committee charged with drafting the bill to be presented for debate before the legislature later this year.

¹⁷⁵ JFJ Impunity Report, *supra* note 1, at 16.

¹⁷⁶ *Id.*

¹⁷⁷ JFJ Reform Initiative Report, *supra* note 41, at 14.

¹⁷⁸ Interview with Attorney General, *supra* note 136.

4. Prosecutions and the Judiciary

Regarding prosecutions and the judicial process, *Pattern of Impunity* offered a discouraging diagnosis. Extremely lengthy delays in the judicial process combined with unprofessionalism, inexperience and bias in the courtroom create a “flawed justice system that allows the Jamaican police to carry out killings with impunity.”¹⁷⁹ To begin with, all cases of fatal police shootings must be investigated by the local Coroner’s court.¹⁸⁰ In Kingston, Jamaica, a city of over 600,000 people, there is only one Coroner, a magistrate, to oversee all such inquests. Generally, upon receipt of the medical and police reports, the Coroner in any district is obliged to summon no fewer than five jurors to a hearing scheduled *within 30 days* after receiving the results of the police investigation. After hearing the evidence, the members of the jury will issue a verdict setting forth their findings as to the manner in which the victim(s) died, and, if it appears a crime was committed – murder or manslaughter, for example – identify the perpetrators whom the jury believes should be charged with such crimes.

The Coroner’s ability to handle cases in an efficient and timely manner is severely hampered by a lack of adequate resources. Because there is no secretary, clerk or stenographer to assist during the proceedings, the Coroner himself is personally responsible for taking handwritten notes of the testimony received and evidence considered by the jury.¹⁸¹ These difficulties are compounded by the fact that in some parts of the country, Coroner’s courts meet only once a month. Witnesses often fail to appear in court, and other evidence gathered during police investigations is not always available. One killing that took place in St. Andrew parish in 1998 was first heard by a Coroner’s court in 2004, followed by 18 hearings over a span of three years. The case was ongoing as of May 2007. As of December 2007, official statistics indicate that there are at least 500 cases of fatal police shootings backlogged in the Coroner’s courts around the country, though there may be substantially more.¹⁸² This backlog is partially to blame for the long delays in trials.

Government officials interviewed for this report referred to a parliamentary proposal to amend the Coroner’s Act to create a “special” Coroner’s court to promote the speedy resolution of the backlogged cases.¹⁸³ The delay and dysfunction of the Coroners’ courts is a major factor contributing to the chronic impunity reigning in cases of police killings, but it is not the only one. Other key actors in the judicial process, such as the Director of Public Prosecutions, whose office is constitutionally charged with exclusive authority to initiate prosecutions, play an equal or greater role.

a. Director of Public Prosecutions

¹⁷⁹ JFJ Impunity Report, *supra* note 1, at 22.

¹⁸⁰ Pursuant to the Coroner’s Act of 1900, any violent or unnatural death must be investigated by the corresponding Coroner, a local magistrate, to determine the cause of death and the existence of potential criminal liability. The Coroner’s Act (June 12, 1900) [Act 6 of 2005] (Eng.).

¹⁸¹ Petition, Patrick Genius and Leonie Marshall v. The State of Jamaica, Inter-Am. C.H.R. (filed May 11, 2007), ¶ 51 [hereinafter Patrick Genius Petition].

¹⁸² Annex I, BSI Table, *supra* note 2; Interviews with high ranking government officials, *supra* note 133.

¹⁸³ Interview with Attorney General, *supra* note 136.

Between 1999 and 2007, the BSI referred more than 1,500 police shooting cases involving both fatalities and injuries to the Director of Public Prosecutions (DPP). Of these, only 134 were prosecuted, leading to a mere 10 convictions. This means that since 1999, the DPP has decided to pursue criminal proceedings in less than 10% of cases investigated where police shootings resulted in death or bodily harm.¹⁸⁴ In nearly a decade, the DPP has succeeded in securing only one conviction of a police officer for murder, in 2006.¹⁸⁵

With respect to the 90% (or more) of police shooting cases that do not get prosecuted, the DPP's decision to not pursue criminal action is virtually unassailable. While Jamaica does provide in theory for judicial review of DPP decisions in this respect, the burden on the applicant is prohibitively high. To prevail in a challenge to the DPP's decision not to prosecute a case, the petitioner must show that the DPP exercised his discretion in a manner "so manifestly wrong as to amount to an unreasonable, irregular or improper exercise of his power."¹⁸⁶ And that is only possible if petitioners can overcome the various procedural hurdles and long delays associated with pursuing such a claim.

A perfect example is the Patrick Genius case, where a Coroner's court determined that there were grounds on which to find criminal responsibility in the fatal shooting of the victim in 1999 by police.¹⁸⁷ After the case was referred to the DPP for further action, the DPP refused to file charges against the policemen identified (there was no question who shot and killed Patrick Genius) despite the jury's verdict that the evidence supported finding "person or persons criminally responsible" for murder.¹⁸⁸ The DPP claimed that the perpetrators' testimony that they had acted in self-defence was not sufficiently negated by other evidence (including an autopsy showing the victim was shot from behind) to warrant mounting a prosecution. Over the course of several years – from March 2002 to December of 2006 – Patrick Genius' mother, Leonie Marshall, fought for effective judicial review of the DPP's decision, appealing through the highest courts in Jamaica all the way to the Judicial Committee of the Privy Council in the United Kingdom. In denying her petition, the Privy Council affirmed that under the Jamaican Constitution the DPP enjoys almost complete deference, such that judicial review of his decisions is at best a "highly exceptional remedy."¹⁸⁹

¹⁸⁴ See Annex I, BSI Table, *supra* note 2. Approximately 80% of the case investigations completed by BSI are sent to the DPP. The remaining 20% are sent to the Commissioner of Police (with one single case going to Professional Standards Branch). One can assume that most, if not all, cases involving fatal incidents and injury incidents that were successfully investigated by BSI were sent to the DPP instead of the Commissioner of Police.

¹⁸⁵ *Id.*

¹⁸⁶ Decision of the Full Court on Judicial Review (Reid, Harrison & D.O. McIntosh, JJ), *In the Matter Touching and Concerning the death of Patrick Genius and...the Coroner's Act and...the Office of the Director of Public Prosecutions*, Suit No. 2002/M-35 in the Supreme Court of Jamaica (May 2003), Record of Proceedings in the Privy Council, at 135, citing Sir Denys Williams, C.J., in *In Kings Application* (1991) 40 WIR 15.

¹⁸⁷ Decision of the Full Court on Matter of Leave of Court (Justice Wolfe CJ, Beckford & Marsh JJ), *In the Matter Touching and Concerning the death of Patrick Genius and...the Coroner's Act and...the Office of the Director of Public Prosecutions*, Suit No. 2002/M-35 in the Supreme Court of Jamaica (Oct. 31, 2002), included in the Record of Proceedings in the Privy Council, at 98 [hereinafter Full Court Judgment]; See also *Leonie Marshall v. Director of Public Prosecutions*, Reasons for Decision of the Lords of the Judicial Committee of the Privy Council, ¶ 6 (Nov. 22, 2006) [hereinafter Privy Council Judgment].

¹⁸⁸ Full Court Judgment, *supra* note 187, at 98; Transcript of Radio Interview by Ruth-Ann Wynter and Patrick Bailey with Kent Pantry, Director of Public Prosecutions, Drive Time Live, HOT 102 FM, in Kingston, Jamaica (Jan. 9, 2002).

¹⁸⁹ Privy Council Judgment, *supra* note 187, at 11 ¶ 17.

b. The Judiciary

In 2006, the UN Special Rapporteur on Extrajudicial Executions, in referring to the Jamaican system of justice reported that “it would be difficult to devise a system more conducive to ensuring impunity for those committing extrajudicial executions.”¹⁹⁰ The capstone of this dysfunctional legal order is the judiciary, which since at least 1999 has produced only one conviction of a police defendant for murder, and only in 2006.¹⁹¹ The impunity afforded by the judicial system as a whole seems to flow largely from two fundamental flaws: the failure to maintain an infrastructure capable of rendering justice in a fair and efficient manner, and the failure of those involved in the judicial process to do so impartially, whether due to bias, intimidation or both.

As we have seen, there are a number of contributing causes to the near non-existent conviction rate for unlawful police killings: overwhelmed Coroner’s courts, difficulties in collecting and preserving admissible evidence; the intimidation and/or unavailability of witnesses for trial; as well as an extremely low prosecution rate for cases of police shootings. But there is evidence to suggest that Jamaican judges play an important role as well. For example, in the Kraal case, the questionable conduct of both prosecutors and judges – especially high court judges – substantiated allegations of a pronounced lack of independence and impartiality.¹⁹² Similar claims of excessive pro-police bias have been made with respect to other cases of fatal shootings in which the evidence seems to support the prosecution if not a conviction of police perpetrators, such as the Patrick Genius case.¹⁹³ In addition, where bias is not an issue, there is evidence that trial judges fear reprisals from police defendants, their colleagues, and even the public if they rule against the accused.

Finally, there is a perceived failure not just of DPP prosecutors and judges to handle police shooting cases in an objective manner, but also jurors. The bias of jurors in favor of police defendants is reinforced by founded well-founded fears of reprisal from the police officers charged and/or their colleagues. We have already described the practice of threatening and, in some cases, killing witnesses and other key actors pursuing justice for police killings,¹⁹⁴ a reality jurors in Jamaica are well aware of. Another example arises when a police officer is being prosecuted: the court will “coincidentally” be packed with other police officers, especially during the final days of the trial. This common practice intimidates both judges and jurors.¹⁹⁵

c. Redress for the Victims

Finally, in relation to redress, JFJ in *Pattern of Impunity* observed that victims of police violence and their families do not receive “simple and prompt recourse” from the judicial

¹⁹⁰ 2006 UN Report, *supra* note 1, ¶ 75.

¹⁹¹ See Annex II, GW/JFJ Chart, *supra* note 2.

¹⁹² See Annex III, Kraal Killings Report, *supra* note 130.

¹⁹³ Patrick Genius Petition, *supra* note 181, ¶¶ 50-56.

¹⁹⁴ See *supra* notes 162 - 166.

¹⁹⁵ Email from Shawn Wilkinson, JFJ Legal Counsel, to GWIHRC (Feb. 28, 2008, 02:03 PM, EST) (on file with GWIHRC).

system.¹⁹⁶ Most families are not represented by attorneys or even informed about hearings where they could testify as vital witnesses.

In light of the stark statistics on prosecutions and convictions, it is clear that the vast majority of victims does not have access to effective remedies or obtain reparations for the harm they have experienced. Recently, however, there has been a marked increase in the number of cases settled by the government. The new Attorney General has been resolving cases through direct negotiations with family members of victims of police slayings, and by making payment of compensation in some cases.¹⁹⁷ Additionally, the authorities have offered to assist next of kin with expenses incurred as a result of a fatal police shooting. Thus, Jeff Smellie's uncle affirms that the Police Superintendent not only told him that the shooting of his nephew was a mistake but also offered to help the family with the boy's funeral arrangements.¹⁹⁸ Andre Thomas' father and brother received a check for funeral arrangements from the Ministry of National Security. While payment of compensation affords some redress, it falls far short of the adequate remedies required under international human rights law, as discussed in the next Part.

5. Concluding observations

It is evident with respect to fatal police shootings that the pillars of impunity identified in JFJ's 2004 report to the Inter-American Commission – deeply deficient police investigations; a lack of effective independent oversight; and compromised impartiality among investigators, prosecutors and judges – remain virtually unshaken. Of particular concern is the persistent failure by the BSI to conduct timely, adequate and effective investigations into the burgeoning numbers of police killings. While BSI officials cite a lack of resources, training and technical support among their reasons for the low number of prosecutions and convictions reflected in their own statistics, outside observers continue to find institutional bias and internal resistance to accountability within the JCF as the more dispositive reasons. Effective measures have yet to be taken, for example, to address the rampant abuses that arise with respect to control of the crime scenes, firearm use and registration, collection and/or manipulation of evidence, and intimidation of witnesses. The new Labour Government has, accordingly, made it a priority to see that the proposed independent civilian commission of inquiry for police abuses is established and functioning as soon as possible.

But the patently insufficient progress made in overcoming the pattern of impunity that has long characterized the scourge of police executions is not exclusively the JCF's fault. Even when documented cases of police abuse are referred to the Director of Public Prosecution's Office, the great majority are closed with no action taken. Egregious cases of police executions referred by BSI are either not pursued in the courts by DPP prosecutors, or are un-zealously prosecuted, as in the Kraal case. There is no effective oversight of this process, either political or judicial. It is difficult to determine which is worse: the nearly non-existent probability that cases investigated by the BSI and referred to the DDP's office for action will actually result in a criminal investigation, much less a conviction, or the enormous backlog of 500 unresolved fatal

¹⁹⁶ JFJ Impunity Report, *supra* note 1, at 23.

¹⁹⁷ Interview with Richard Small, Attorney and Human Rights Defender, in Kingston, Jamaica (Dec. 20, 2007).

¹⁹⁸ Jamaicans for Justice, Complaint Form, Complainant Christine Coombs regarding Jeff Smellie, Aug. 29, 2005 (on file with GWIHR).

incidents that may never be fully investigated or make it to the DPP's office at all. On the rare occasions that a police shooting case makes it way into the courts, intimidation and a pervasive pro-police bias among judges and jurors ensures that virtually no defendant will be convicted.

III. JAMAICA'S COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS LAW

The State of Jamaica and its agents, especially law enforcement officials, are bound by international human rights law. The American Convention on Human Rights (ACHR or American Convention), ratified by Jamaica, lays the foundation for the applicable legal regime by which to assess Jamaica's compliance with international human rights norms. Under the American Convention, Jamaica is legally bound to actively respect fundamental human rights, as well as to guarantee the full enjoyment of such rights by adopting measures necessary for their safeguard and implementation.¹⁹⁹ To aid in promoting compliance, the American Convention is further complemented by international standards promulgated by international experts under the auspices of the United Nations; these standards act as supplementary rules which give content to the general obligations prescribed in the Convention, inform their proper interpretation, and guide state parties in implementing measures to better comply with their duty to respect and ensure respect for the human rights of citizens.

This Part analyzes Jamaica's obligations under the American Convention in relation to the widespread and systematic practice of police killings described in the prior Part, as well as the persistent pattern of impunity that accompanies it. It is divided into three sections. The first sets out the normative framework under the Convention and applies it to the factual panorama described in Part II. The second outlines specific measures that, in light of prevailing international standards, Jamaica should adopt to begin to address the violatory practices and patterns surrounding fatal police shootings and extrajudicial executions. Only through the dedicated application of such measures will Jamaica be able to fulfill its obligations under the American Convention. The third section offers concluding observations.

A. Jamaica and the American Convention on Human Rights

The American Convention on Human Rights is the primary source of international human rights law for the Americas. As a party to the Convention, Jamaica has undertaken to respect and ensure the rights and freedoms enshrined therein pursuant to Article 1(1). This means that Jamaica must desist from directly transgressing the Convention's protections through the arbitrary or unlawful conduct of its officials, it must adopt measures to prevent such abuses (as also required under Article 2), and it must adequately investigate and punish violations where they nonetheless occur. Importantly, these obligations extend to the ACHR's safeguard of the rights to life (Article 4), physical integrity (Article 5), and due process, which encompasses the right to an effective remedy (Articles 8 and 25).

1. Violations of the Rights to Life (Article 4) and Humane Treatment (Article 5)

¹⁹⁹ American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978 [hereinafter American Convention]. Jamaica ratified the American Convention on July 19, 1978.

Without a doubt, as Part II documents, the relentless practice of fatal shootings by Jamaican police, a substantial percentage of which constitute extrajudicial executions, gives rise to egregious violations of American Convention Articles 4 (Life) and 5 (Physical Integrity). Article 4(1) provides that “[n]o one shall be arbitrarily deprived of his life”, and Article 1(1) imposes on state parties a positive obligation to respect and ensure the rights and freedoms recognized under the Convention. In light of the evidence presented, Jamaica’s grave violations of the right to life of citizens who fall victim to police shootings are as widespread and systematic as the practice itself.

In addition to the substantive violations of Article 4 generated by the practice of summary executions, Jamaica’s failure to properly investigate *all* fatal police shootings, or to prosecute and punish police perpetrators of unlawful killings, gives rise to ongoing procedural violations of the right to life as well.²⁰⁰ The Inter-American Court has specifically addressed the heightened importance of conducting criminal investigations and punishing those responsible in cases of extrajudicial killings, affirming that otherwise “they would be creating, in a climate of impunity, the conditions that will allow these events to continue, which is contrary to the duty to respect and guarantee the right to life.”²⁰¹ As explained below, Jamaica’s failure to investigate police shootings diligently and punish perpetrators also produces continuing violations of ACHR Articles 8 and 25, which reinforces the finding of procedural offenses under Article 4.

It would further appear from the discussion of paradigmatic cases in Part II that many of the victims of extrajudicial killings are incapacitated and even tortured before execution. The Inter-American Court has long recognized that moral harm in the form of pain and suffering inflicted on victims of summary executions by state agents prior to their death will constitute a distinct violation of Article 5.²⁰² In fact, the Court will *presume* such moral harm exists with respect to the victim who may be dead or disappeared, because “it is characteristic of human nature that anybody subjected to the aggression and abuse [of a serious violation] will experience moral suffering,” regardless of whether evidence of this suffering is available.²⁰³ A notable example is Orville Russell, who managed to escape from the car in which he and his friends were riding when the police opened fire. His lifeless body was discovered in a neighboring field, with evidence that he had been severely beaten and tortured before being killed. Before they were executed, Lance Zab, Andre Thomas and Dexter Hyatt all had time to plead for their lives following incapacitating police gunshots to their arms, legs or torso. Many victims of police killings, therefore, are treated cruelly before being arbitrarily deprived of their life, in violation of ACHR Article 5.

Finally, Jamaica has violated the right to humane treatment of surviving family members

²⁰⁰ See 19 Merchants Case, 2004 Inter-Am. Ct. H.R. (ser. C) No. 109 ¶¶ 8-10 (Quiroga, J., partially dissenting opinion) (July 5, 2004); see also Veznedaroglu v. Turkey, Eur. Ct. H.R., App. No. 32357/96, ¶ 39 (April 11, 2000), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=32357/96&sessionid=5806602&skin=hudoc-en>. A detailed description of the due process failures in the Patrick Genius case are found *infra* in Section C.

²⁰¹ Baldeón-García Case, 2006 Inter-Am. Ct. H.R. (ser. C) No. 147 ¶ 91 (Apr. 6, 2006) [hereinafter Baldeón-García Case].

²⁰² See, e.g., Castillo-Páez Case, 1998 Inter-Am. Ct. H.R. (ser. C) No. 43 ¶ 86 (Nov. 27, 1998).

²⁰³ Aloboetoe et al. Case, 1993 Inter-Am. Ct. H.R. (ser. C) No. 15 ¶ 52 (Sept. 10, 1993).

under Article 5. The Inter-American Court has established that the next of kin may themselves become victims of violations under the American Convention as a result of the suffering they endure due to the abuses committed against their loved ones, as well as the subsequent conduct of the State in response to the initial violations.²⁰⁴ For example, in a case involving the torture and execution of street children by state agents, the Court recognized and compensated the anguish of the primary victim's next of kin as distinct violations of Article 5.²⁰⁵ Where judicial proceedings compound the suffering rather than resolve it – through delay, bad faith or simple abuse – the Court has not hesitated to find additional violations of the Convention.²⁰⁶ As should be obvious from the cases described in Part II, family members themselves suffer immensely due to the violent death of their son, brother, or father at the hands of police. The deficient investigations that follow, together with the non-responsive judicial system, only exacerbate their distress, in further violation of Article 5.

2. Rights to Due Process and Judicial Protection (Articles 8 and 25)

It is evident in light of the discussion in Part II that Jamaica is in flagrant violation of the relevant due process rights and judicial protections enshrined in ACHR Articles 8 and 25. Jamaica's systematic failure to conduct thorough, prompt and impartial investigations into fatal police shootings and extrajudicial executions constitutes a serious and continuing violation of American Convention in this respect. Both the Inter-American Commission and the Court have held that when other rights protected under the American Convention are violated, Articles 8 and 25, in conjunction with Article 1(1), oblige state parties to undertake thorough, prompt and impartial investigations into the violations alleged, as well as to prosecute and punish those responsible.²⁰⁷ Moreover, with respect to Jamaica *specifically*, the Commission had already expressed concern regarding the ongoing pattern of police killings between 1999 and 2002, observing that “[i]n the face of these circumstances, Jamaica faces a particularly high burden in establishing that its investigations of police killings in specific cases have been thorough, prompt and impartial.”²⁰⁸ Part II establishes beyond a reasonable doubt that Jamaica's wholesale failure to meet this burden persisted through 2007.

The State must not only ensure diligent investigations, but these and other procedures afforded to protect fundamental human rights must conform to the due process protections prescribed in Article 8 of the American Convention. Article 8 states in relevant part that “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” The connection between a state's obligations to respect and ensure human rights, to provide effective judicial protection for those rights, and to guarantee due process in the determination of rights is well-established in

²⁰⁴ See Baldeón-García Case, *supra* note 201, ¶ 128; López-Álvarez Case, 2006 Inter-Am. Ct. H.R. (ser. C) No. 141 ¶ 119 (Feb. 1, 2006); Pueblo Bello Massacre Case, 2006 Inter-Am. Ct. H.R. (ser. C) No. 140 ¶ 154 (Jan. 31, 2006).

²⁰⁵ See Street Children (Villagrán-Morales et al.) Case, 1999 Inter-Am. Ct. H.R. (ser. C) No. 63 ¶¶ 173-174, 177 (Nov. 19, 1999) [hereinafter Street Children Case].

²⁰⁶ *Id.* at ¶¶ 173-174.

²⁰⁷ See, e.g., Abella v. Argentina, Case 11.137, Inter-Am. C.H.R., Report No. 55/97, OEA/ser.L/V/II.98, doc. 6 rev. ¶ 412 (1998) [hereinafter Abella Case]; see Michael Gayle Case, *supra* note 23, ¶ 82.

²⁰⁸ Michael Gayle Case, *supra* note 23, ¶ 88.

regional jurisprudence. “States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).”²⁰⁹

Article 25 of the American Convention imposes on state parties an obligation to provide everyone in their jurisdiction with “simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violations may have been committed by persons acting in the course of their official duties.” As noted, primary among the distinguishing characteristics of a competent tribunal is that its magistrates be independent and impartial arbiters of justice. It is for this reason that the Inter-American Court has described the obligations imposed on states by Article 25 as “one of the basic pillars, not only of the American Convention, but also of the Rule of Law in a democratic society as per the Convention.”²¹⁰

Part II reveals that neither the Director of Public Prosecutions nor the Judiciary in Jamaica provides effective judicial protection to victims of unlawful police killings. The prosecutorial and judicial authorities have failed for nearly a decade to provide victims of police shootings and their families basic due process or effective judicial remedies. Impunity for the nearly 1500 victims of police killings since 1999 is virtually absolute; only one policeman has ever been convicted of homicide. Of the more than 1500 case files of police shootings (including both killings and non-fatal injuries) referred by the Bureau of Special Investigations to the DPP between 1999 and 2007, only 134 were prosecuted, less than 10%! And those are only the cases that have been investigated. BSI statistics through 2007 show that 1400 investigations of police shootings since 1999 have *not* yet been completed, over 40% of the total number recorded. In addition, their current backlog of police fatal shooting cases in the Coroner’s Courts surpasses 500 cases and is growing. The combination of investigatory inefficiency, the generalized failure of the DPP to prosecute police perpetrators, and the palpable bias of many Jamaican judges in favor of police defendants brings the practical non-existence of effective remedies for victims sharply into focus.

B. Forging Compliance: International Standards, Principles, and Guidelines

At the end of the day, when the practice of police killings and the pattern of impunity are held up to the light of international law, it is plain that there is much more Jamaica must do to bring the conduct of its law enforcement and judicial authorities into line with the binding human rights commitments it voluntarily assumed under the American Convention. Our purpose in this final section is to move beyond the general recommendations postulated by previous international observers by focusing on the specific steps that Jamaican authorities can take to rectify the humanitarian crisis described. Accordingly, our recommendations derive from the rich array of international standards, principles and guidelines on law enforcement and judicial

²⁰⁹ Velasquez-Rodriguez Case, 1987 Inter-Am. Ct. H.R. (ser. C) No. 1 ¶ 91 (June 26, 1987) [hereinafter Velasquez-Rodriguez Preliminary Objections].

²¹⁰ Cantoral-Benavides Case, 2000 Inter-Am. Ct. H.R. (ser. C) No. 69 ¶ 163 (Aug. 18, 2000).

conduct, designed precisely for this purpose: to inform states in the proper interpretation of their international obligations and to guide them in adopting measures that enhance compliance with their international human rights commitments.²¹¹

Both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have affirmed the relevance and utility of applying these quasi-legal standards to the interpretation and implementation of the American Convention. When interpreting specific provisions, the Inter-American Court will draw upon complementary international standards emanating from the United Nations (UN) where appropriate to define the content and scope of the Convention's norms. Thus, in the Case of the Miguel Castro-Castro Prison v. Peru, the Court relied directly upon UN standards on use of force and firearms for law enforcement officials, as well as norms governing the effective investigation of extrajudicial executions, to ground its findings that the Peruvian security forces had used excessive force resulting in unlawful killings that subsequently were not properly investigated by the judicial authorities.²¹² On this basis it held the State responsible for violations of ACHR Articles 4, 5, 8 and 25.²¹³

In the Michael Gayle case, the Inter-American Commission similarly applied the *UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* to analyze the state of Jamaica's non-compliance with Articles 8 and 25.²¹⁴ In so doing, the Commission stated that, in interpreting these provisions, it would rely on "instruments promulgated at the international level that provide useful guidelines as to the minimum standards applicable to the investigation and prosecution of violations of internationally-protected human rights."²¹⁵ As is clear from the practice of both the Court and the Commission, then, these internationally accepted standards "exert a significant influence over the interpretive context which operates today in relation to situations involving extrajudicial executions."²¹⁶

But these rules do not only function to give content and meaning to treaty obligations. They also operate as a framework for orienting "international action and national legislation."²¹⁷ By and large, since they are promulgated by the UN General Assembly, these norms manifest a "character of universality," and tend to reflect the minimum standards by which state conduct is judged.²¹⁸ For this reason, state parties to the American Convention, such as Jamaica, would do well to refer to these standards as authoritative sources of normative guidance when pursuing law

²¹¹ For a complete list of these standards, principles and guidelines, *see* Annex IV.

²¹² Miguel Castro-Castro Prison Case, 2006 Inter-Am. Ct. H.R. (ser. C) No. 160 ¶¶ 239, 383 (Nov. 25, 2006) (applying the U.N. Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officials, and the U.N. Manual on the Prevention and Effective Investigation of Extrajudicial, Arbitrary and Summary Killings) [hereinafter Castro-Castro Prison Case].

²¹³ *Id.* at ¶ 470.

²¹⁴ Michael Gayle Case, *supra* note 23, ¶¶ 84-86.

²¹⁵ Michael Gayle Case, *supra* note 23, ¶ 84.

²¹⁶ U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Interim Report of the Special Rapporteur Philip Alston*, U.N. Doc. A/61/311 ¶ 31 (Sept. 5, 2006) [hereinafter 2006 Interim Report].

²¹⁷ Jiri Toman, *Quasi-Legal Standards and Guidelines for Protecting Human Rights*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 217, 217 (Hurst Hannum ed., 2004).

²¹⁸ U.N. High Commissioner for Human Rights, Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police ¶ 116 (1997), available at <http://www.unhchr.ch/html/menu6/2/training.htm> [hereinafter U.N. Training Manual].

enforcement reforms.²¹⁹ While not legally binding in themselves, they complement the framework of state obligations under the American Convention, thereby contributing to more effective implementation, application and, ultimately, compliance.

1. Standards for Compliance

The remainder of this section focuses on four key areas in which Jamaica must implement effective measures to begin to redress the violations analyzed above. These are (1) Training and Monitoring; (2) Use of Force and Firearms; (3) Police and Independent Investigations; and (4) Prosecutorial and Judicial Integrity. (The issue of redress for victims is addressed in the final subsection.) It is important to remember that the adoption of the measures outlined below (where not already in place) is required by the American Convention. Article 2 builds on Article 1(1)'s duty to ensure rights and freedoms by requiring states to "adopt, in accordance with their constitutional processes and the provisions of [the American] Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."²²⁰ By the same token, once the necessary measures are in place, Jamaica is bound under the same ACHR provisions to ensure that they are effectively implemented and enforced. What follows, then, is a recommended roadmap for Jamaica to follow in this respect.

a. Training and Monitoring

Numerous guidelines and principles promulgated by the United Nations reflect that Jamaica's obligations under the American Convention encompass the duty to train police officers in applicable human rights standards. Article 2 of the *Code of Conduct for Law Enforcement Officials*²²¹ recognizes that law enforcement officials must "respect and protect human dignity" as well as "maintain and uphold the human rights of all persons." Inherent in these duties is the obligation of law enforcement agencies to afford proper training to its officers as to the applicable human rights norms.

The *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*²²² emphasize the need for training on human rights norms. Principle 19 compels governments and law enforcement agencies to afford *comprehensive* training on the use of firearms before authorizing law enforcement officials to carry them, while Principle 20 specifically instructs governments and law enforcement agencies to "give special attention to issues of police ethics and human rights" when training law enforcement officials. It further calls upon law enforcement

²¹⁹ Michael Gayle Case, *supra* note 23, ¶ 84; *see, e.g.*, Quiñones v. Ecuador, Case 10.580, Inter-Am. C.H.R., Report No. 10/95, OEA/Ser.L/V/II.91, doc. 7 ¶¶ 32-34 (1996); Abella Case, *supra* note 207, ¶¶ 413-415; Hernández Hernández v. Mexico, Case 11.543, Inter-Am. C.H.R., Report No. 1/98, OEA/Ser.L/V/II.95 doc. 7 rev. ¶¶ 74-76 (1998).

²²⁰ Velasquez-Rodriguez Case, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4 ¶ 168 (July 29, 1988) [hereinafter Velasquez-Rodriguez Merits].

²²¹ *Code of Conduct for Law Enforcement Officials*, G.A. Res. 34/169, Annex, U.N. Doc. A/Res/34/169/Annex (Dec. 17, 1979), available at http://www.unhchr.ch/html/menu3/b/h_comp42.htm [hereinafter Code of Conduct].

²²² *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990), available at http://www.unhchr.ch/html/menu3/b/h_comp43.htm [hereinafter Basic Principles on Use of Force].

bodies “to review their training programmes and operational procedures in ... light of particular incidents.”

Notably, Provision 2 of the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*²²³ obligates states to “ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.” The *Principles on the Prevention of Human Rights Violations Committed with Small Arms*²²⁴ expressly states that in training law enforcement agents, special attention must be given “to the promotion and protection of human rights as a primary duty of all State agents.”²²⁵

This normative framework emanating from the American Convention requires that Jamaica provide comprehensive training to all its law enforcement officials in conformity with domestic and international legal standards. The State must also ensure that such training is applied in practice through effective follow-up and monitoring. There is some evidence that in Jamaica cadets receive a degree of training in human and civil rights norms at the Police Academy; it is possible this training could even increase. In addition, it would seem that a small number of active police agents have received courses in human and civil rights standards. Nonetheless, the skyrocketing number of fatal police shootings is tragic testimony to the fact that whatever training is being provided is in any case insufficient or impractical or both. Clearly, Jamaica must take concrete steps to improve the quantity and quality of training for its law enforcement officials in this regard.

A JCF official recently commented that although police officers do receive schooling in the rules governing the use of force, “when you get out there, it is as if the entire thing changes, because now, you are no longer in the controlled environment of training”²²⁶ It is certainly true that Jamaican police face a difficult reality in carrying out their law enforcement duties. However, without the appropriate follow-up mechanisms to provide for effective monitoring and support of well-trained police agents in the field, there is no guarantee that a proper application of civil and human rights standards can be adequately promoted or enforced. There is no evidence that Jamaica possesses any such mechanisms, or that any significant degree of accountability is enforced within the JCF for transgressions of existing standards for professional police conduct. Until Jamaica implements such measures, it will continue to be out of compliance with its international obligations to respect and ensure respect for fundamental human rights.

b. Use of Force and Firearms

²²³ *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, ECOSOC Res. 1989/65, Annex, U.N. Doc. E/1989/89 (May 24, 1989), available at <http://www.unhcr.org/html/menu3/b/54.htm> [hereinafter *Principles on the Effective Prevention*].

²²⁴ *Principles on the Prevention of Human Rights Violations Committed with Small Arms*, Sub-Com. Res. 2006/22, Annex, U.N. Doc. A/HRC/Sub.1/58/L.11/Add.1 at 6 (Aug. 24, 2006), available at <http://daccessdds.un.org/doc/UNDOC/LTD/G06/137/29/PDF/G0613729.pdf?OpenElement> [hereinafter *Small Arms Principles*].

²²⁵ *Small Arms Principles*, *supra* note 224, principle 6.

²²⁶ Gareth Manning, *Police Receive Adequate Training*, JAMAICAN GLEANER, Sept. 30, 2007.

Articles 4 and 5 of the American Convention categorically prohibit extrajudicial killings, torture, and cruel, inhuman or degrading treatment, all of which constitute foreseeable consequences of the excessive use of force and firearms. Articles 1(1) and 2 of the ACHR impose on state parties the obligation to refrain from committing such violations and the obligation to adopt measures necessary to prevent them from occurring. Accordingly, state parties have an obligation to ensure that the conduct of their law enforcement agents conforms with the well-established international principles outlined below governing the use of lethal force, proportionality and accountability. This can only be done by implementing effective procedures through which the conduct of those agents can be closely monitored, regulated and, if necessary, sanctioned.

Provision 1 of the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* echoes the prohibition on extrajudicial, arbitrary and summary executions resulting from the excessive or illegal use of force and firearms. The remaining provisions contemplate prevention and punishment through the following mechanisms: adequate monitoring and oversight by superiors of those officials authorized to use force and firearms; a “thorough, prompt and impartial investigation” in cases where misconduct is alleged to have occurred; and an effective mechanism by which those responsible for wrongdoing, including police superiors who “had a reasonable opportunity to prevent such acts,” can be brought to justice.

Article 2 of the *Code of Conduct for Law Enforcement Officials* requires that officials “respect and protect human dignity and maintain and uphold the human rights of all persons.” Article 3 authorizes the use of force by law enforcement officials “only when strictly necessary and to the extent” that the fulfillment of their public duties so require. The use of force cannot be “disproportionate to the legitimate objective to be achieved” and constitutes an “exceptional” mode of achieving such ends. Furthermore, the use of firearms is an “extreme measure” and “[e]very effort should be made to exclude” their use. Article 3 reflects the customary norm of international law that the use of force must be legitimate, necessary and proportional to the intended objective.

The *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* is a key document that further elaborates on the customary norms requiring legitimacy, necessity and proportionality in the use of lethal force. It sets forth a general prohibition on the use of such force with a limited number of exceptions where the circumstances may justify otherwise.²²⁷ It stresses that law enforcement officials must first use non-violent means, if possible, to achieve their desired objectives.²²⁸ Where force becomes necessary, the *Basic Principles* requires that law enforcement officials first identify themselves and when possible notify the individual targeted of their intent to use force.²²⁹ It also establishes that force must be exercised in proportion to the perceived threat; there is, moreover, an obligation to minimize the degree of injury and to take all possible measures to avoid causing death.²³⁰ Officers must also make certain that persons injured through the use of firearms receive immediate assistance and medical care, that family or close

²²⁷ Basic Principles on Use of Force, *supra* note 222, principle 9.

²²⁸ *Id.*, principles 2 & 4.

²²⁹ *Id.*, principle 10.

²³⁰ *Id.*, principles 2, 4 & 5.

friends are notified, and that the incident is promptly reported to a superior.²³¹ Finally, the *Basic Principles* dictate that law enforcement agencies must not only “adopt and implement rules and regulations on the use of force and firearms” but also monitor compliance with such policies on a systematic basis.²³²

The Inter-American Court has expressly endorsed the notion that lethal force may only be used as a last resort.²³³ The Court acknowledges that while states and their agents have the obligation “to guarantee security and maintain public order,” they must nevertheless act “within the limits and pursuant to the procedures [outlined above] that permit both the preservation of public security as well as the fundamental rights of human beings.”²³⁴ Unfortunately, the factual panorama depicted in Part II establishes that the Jamaican police have very little regard for these procedures, principles or rules. And, as noted already, it is unlikely that this critical situation will change without significant improvement in the training of police cadets and active officers in the application of the relevant standards identified in this section.

At the same time, accountability for non-compliance with these rules, many of which are already in place in the Jamaican system, must be ensured. In particular, the effective monitoring of weapons and munitions involved in fatal police shootings is urgently required. Until proper gun control measures are implemented and enforced within the JCF, the manipulation of evidence by unscrupulous police agents through the planting of firearms at the scene of police shootings will continue unchecked. The state must ensure not just the proper monitoring of professional conduct but also sanctions for disciplinary infractions by law enforcement officers. It must at the same time guarantee the criminal investigation, prosecution, and punishment of perpetrators in those cases where police misconduct results in the unlawful killing of civilians or the obstruction of justice.

c. Police and Independent Investigations

The broad purpose of an inquiry into a police killing is to discover the truth about the events leading to the death of the victim.²³⁵ The overarching rule, as reflected in the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, is that states must conduct a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death”²³⁶ The Inter-American Commission, in the Michael Gayle case, quoted directly from these *Principles* to give content to Jamaica’s duties under American Convention Articles 8 and 25; it observed that in all cases of fatal police shootings

²³¹ *Id.*, principles 5 & 6.

²³² *Id.*, principle 1.

²³³ Castro-Castro Prison Case, *supra* note 212, ¶ 239.

²³⁴ *Id.* at ¶ 240.

²³⁵ United Nations, Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, *Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions* (“Minnesota Protocol”), at section B, U.N. Doc. E/ST/CSDHA/12 at III (1991), available at <http://www.icrc.org/themissis.nsf/b5a5eed1a93ca649c12569dd00505aca/448d147db779628ac1256b02005c3e62!OpenDocument> [hereinafter Minnesota Protocol].

²³⁶ Principles on the Effective Prevention, *supra* note 223, provision 9.

[t]he purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. (...) Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions (...) are brought to justice.²³⁷

To achieve the goal of conducting adequate investigations, Jamaican authorities must take effective measures to ensure (i) proper crime scene preservation and the collection of evidence, as well as (ii) the independent investigations of fatal police shootings. Each is addressed in turn.

i. Preservation of the Crime Scene and Evidence Collection

Quoting the *Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol)*,²³⁸ the Inter-American Commission in the Michael Gayle case observed that “[o]ne of the most important aspects of a thorough and impartial investigation of an extra-legal, arbitrary and summary execution is the collection and analysis of evidence. It is essential to recover and preserve physical evidence, and to interview potential witnesses so that the circumstances surrounding a suspicious death can be clarified.”²³⁹ The *Minnesota Protocol* addresses the potential for abuse, corruption, ineffectiveness and neglect during the investigatory stage in cases involving extrajudicial killings.²⁴⁰ In this respect, it prescribes detailed procedures for preserving a crime scene, collecting evidence, conducting forensic tests, and undertaking a thorough autopsy in such cases. Section C of the *Minnesota Protocol* establishes, among a long list of requisite steps, that:

- the area in which evidence is located should be closed off to the public;
- photographs of the scene and physical evidence located at the scene should be taken in a prompt manner;
- investigators should promptly record the condition of the body;
- weapons such as guns, projectiles, bullets and cartridge cases should be taken and preserved;
- tests for gunshot residue and trace metal detection should be performed on the victims’ bodies and the police officers involved;
- fingerprints of relevant persons should be preserved;
- information should be obtained from witnesses;
- all persons at the scene should be identified;

²³⁷ Michael Gayle Case, *supra* note 23, ¶ 85.

²³⁸ See Minnesota Protocol, *supra* note 235.

²³⁹ Michael Gayle Case, *supra* note 23, ¶ 86.

²⁴⁰ U.N. Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc E/ST/CSDHA/12 at II (1991), available at <http://www.icrc.org/themissi.nsf/b5a5eed1a93ca649c12569dd00505aca/c4dce356767f80b1c1256b02005c051e!OpenDocument>.

- a report detailing the work of the investigators during their on-site visit should be kept and later disclosed;
- evidence should be properly collected, handled, packaged, labeled, and placed in safekeeping to prevent contamination and loss of evidence.

ii. Standards for an Independent Investigation

Various international instruments contain rules calling for independent and impartial investigations into the use of force and firearms by officers.²⁴¹ In particular, the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* stipulates numerous elements required to guarantee independence when investigating police killings. It thus contains provisions:

- Requiring states to provide the investigative authority with sufficient power to compel any relevant parties including the official implicated to testify (Provision 10).
- Obligating states to provide for an independent inquiry into alleged police misconduct through an appointed commission when existing procedures are inadequate or when there are allegations of such inadequacies. The commission members must be independent of individuals implicated in the incident (Provision 11).
- Requiring that those conducting autopsies must be able to function independently and impartially (Provision 14).
- Requiring states to protect those who witness or allege police misconduct and obligating states to remove the implicated officers from any involvement in the investigation (Provision 15).
- Affording the victim’s family and legal representative the right to request that an independent qualified representative be present during the autopsy of the victim’s body (Provision 16).
- Calling for the prompt submission of a written report on the investigation specifically detailing the methods utilized as well as the findings of fact and law resulting from the inquiry. It further requires that such reports be released to the public (Provision 17).
- Recognizing that those undertaking these investigations must “have at their disposal all the necessary budgetary and technical resources for effective investigation” into police killings.²⁴²

iii. Concluding Observations

It is obvious that the routine investigative practices of Jamaican officials following a fatal police shooting do not currently comport with even these minimal international standards in most cases. Police rarely secure the scene of a police shooting incident properly, enabling forensic evidence to be corrupted, destroyed or contaminated by members of the public or even police perpetrators. Recently, modest improvements in BSI investigations have been noted. But autopsies, which can occur long after the shooting incident, are still not thoroughly or adequately

²⁴¹ Principles on the Effective Prevention, *supra* note 223, provision 9; Basic Principles on Use of Force, *supra* note 222, principle 22.

²⁴² Principles on the Effective Prevention, *supra* note 223, provision 10.

conducted. Though independent observers are now permitted to attend the post-mortem procedure, additional measures are required to ensure that proper autopsies are conducted by well-trained government pathologists. The PPCA, established to provide independent civilian oversight of police abuses, is widely perceived as dysfunctional and ineffective. These and other investigative deficiencies are well documented in Part II.

The Government's proposal for an independent civilian commission of inquiry is an encouraging development in the right direction. However, Parliament must still transform the initiative into law and ensure that in practice it comports with the international standards identified in this section. To begin to redress the situation described in Part II, the independent inquiry commission should adopt procedures and ensure specialized training in line with the *Minnesota Protocol* provisions identified. Similarly, more can be done to guarantee that BSI investigators are better equipped to comply with these standards, many of which are already reflected in existing police policies and procedures. Finally, police officers and investigators who fail to follow or respect such procedures must be held accountable, as noted above. Regarding forensic testing, more resources should be sought and allocated to ensure that well-trained ballistics experts and pathologists are placed at the disposal of investigators. These experts should be supported with the necessary equipment required to perform their duties in conformity with the minimum professional standards discussed.

d. Prosecutorial and Judicial Integrity

Under international law, states must adopt all necessary measures to fulfill their obligation of prosecuting and punishing perpetrators of extrajudicial killings.²⁴³ The UN promulgated its *Guidelines on the Role of Prosecutors*²⁴⁴ with the purpose of “securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings.”²⁴⁵ According to the *Guidelines*, prosecutors are expected to retain an “active role” in criminal cases, which may involve undertaking supervisory as well as prosecutorial functions at the investigative, adjudicative, and enforcement stage.²⁴⁶ It requires that prosecutors “perform their duties fairly, consistently and expeditiously,” as well as “respect and protect human dignity and uphold human rights, thus contributing to ensuring due process”²⁴⁷

The *Guidelines* further contemplate that prosecutors will undertake their tasks in furtherance of the duty to serve the public interest.²⁴⁸ Prosecutors should be mindful of the fact that they have the duty to act with objectivity, irrespective of the status of the parties or the circumstances in a given case. The *Guidelines* expressly require that prosecutors take steps to ensure that law enforcement officials are not immune from prosecution. *Guideline* 15 establishes that prosecutors must “give due attention to the prosecution of crimes committed by public

²⁴³ Michael Gayle Case, *supra* note 23, ¶ 101; see also DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 9 (Oxford University Press 2005).

²⁴⁴ *Guidelines on the Role of Prosecutors*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990), available at http://www.unhchr.ch/html/menu3/b/h_comp45.htm [hereinafter *Role of Prosecutors*].

²⁴⁵ *Id.*, intro.

²⁴⁶ *Id.*, guideline 11.

²⁴⁷ *Id.*, guideline 12.

²⁴⁸ *Id.*, guideline 11.

officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.”

It is by now well established that the DPP’s record in prosecuting cases involving police shootings, especially those involving fatalities, is exceedingly poor. There is evidence of the DPP’s failure in these cases to adhere to the basic principles that under Jamaican and international law should orient the prosecutorial function, foremost among them objectivity and fairness. The fact that these lapses occur precisely in situations involving police killings is especially worrisome, suggesting impermissible institutional bias. Efforts to promote greater accountability for DPP inaction have failed.²⁴⁹

The American Convention affords every person the ability to have his or her rights determined “by a competent, independent and impartial tribunal.”²⁵⁰ The *Basic Principles on the Independence of the Judiciary*²⁵¹ also requires the judiciary to perform its functions in a fair, impartial and objective manner; judges must ensure “that the rights of the parties are respected.”²⁵² Numerous other international sources similarly urge prompt and adequate redress for victims through access to fair, impartial and effective judicial proceedings.²⁵³ Article 1 of the *Universal Charter of the Judge*,²⁵⁴ promulgated by the International Association of Judges, establishes that judges must promote “the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal ...” Finally, Principle 10 of the *Basic Principles* dictates that those appointed as judges should possess “integrity and ability with appropriate training or qualifications in law.”

The independence and impartiality of the judiciary guarantee the fair administration of justice, protect against the abuse of power, preserve the due process rights of individuals, including the right to an effective remedy, and ensure the protection of human rights generally. The state’s duty to provide effective judicial remedies is a corollary to its duty under international law to prevent, investigate and punish violations of human rights.²⁵⁵ Effective remedies for victims of police violence – especially criminal sanctions for perpetrators – promote justice and deter the commission of such acts in the future. Thus, under the United Nations’ *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*²⁵⁶ (Principles on the Right to a Remedy), states are required to provide

²⁴⁹ Patrick Genius Petition, *supra* note 181, ¶¶ 50-56.

²⁵⁰ American Convention, Art. 8(1); ICCPR, Art. 14(1).

²⁵¹ *Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, Aug. 26-Sept. 6, 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), available at http://www.unhcr.ch/html/menu3/b/h_comp50.htm [hereinafter Independence of the Judiciary].

²⁵² *Id.*, principles 2 & 6.

²⁵³ *Principles on Right to a Remedy*, *infra* note 256, principle 12; *Principles on the Effective Prevention*, *supra* note 223, provision 20; and *Basic Principles on Use of Force*, *supra* note 222, principle 23.

²⁵⁴ *Universal Charter of the Judge*, approved by the International Association of Judges, Taipei (Taiwan), Nov. 17, 1999, available at http://www.iaj-uim.org/ENG/frameset_ENG.html.

²⁵⁵ Velasquez-Rodriguez Preliminary Objections, *supra* note 209.

²⁵⁶ *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*, G.A. Res. 60/147,

“effective remedies to victims, including reparation ...”²⁵⁷ The purpose of “[a]dequate, effective and prompt reparation,” which depends on achieving punishment for perpetrators, is to “promote justice by redressing gross violations of international human rights law,” such as extrajudicial executions.²⁵⁸

The right to an adequate remedy contains both procedural and substantive components. The procedural component refers to “[e]qual and effective *access* to justice,” as well as “[a]ccess to relevant information concerning violations and reparation mechanisms.”²⁵⁹ The substantive component refers to the “[a]dequate, effective and prompt reparation for [the] harm suffered.”²⁶⁰ The primary modes of reparations are “restitution, compensation, rehabilitation, satisfaction [which includes criminal sanctions] and guarantees of non-repetition.”²⁶¹ Under Inter-American human rights law, monetary compensation alone, as a rule, is insufficient to adequately redress the harm of extrajudicial killings.²⁶² To fulfill their duty of providing full reparations to victims, states must ensure that perpetrators are identified, prosecuted and punished.²⁶³

Thus, states are obligated to ensure, through their domestic laws, that victims have access to remedial justice through fair and impartial proceedings.²⁶⁴ In fulfilling its duties in this regard, states should inform the general public of the ways to seek redress for human rights violations, minimize the inconvenience to victims in pursuing such remedies, and afford them proper assistance in utilizing the legal means available to obtain adequate remedies.²⁶⁵

Concluding Observations

As things stand in Jamaica, true justice is not a viable option for victims of extrajudicial executions and their families. Even where a BSI investigation or a Coroner’s court inquest is completed and sufficient evidence collected to support criminal prosecution, few such cases ever emerge from the Office of the DPP after they are referred there; the DPP routinely buries even egregious incidents of unlawful police killings. In other words, a substantial majority of fatal

Annex, U.N. Doc. A/RES/60/147/Annex (Dec. 16, 2005), available at <http://www2.ohchr.org/english/law/remedy.htm> [hereinafter Principles on Right to a Remedy].

²⁵⁷ *Id.*, principle 3.

²⁵⁸ *Id.*, principle 15.

²⁵⁹ *Id.*, principle 11.

²⁶⁰ *Id.*, principle 11.

²⁶¹ *Id.*, principle 18. The Principles on Right to Remedy detail these forms of reparations in principles 19-23.

²⁶² See Admissibility Petition, Leydi Dayan Sanchez v. Colombia, Inter-Am. C.H.R., Report No. 43/02, ¶ 22 (Oct. 9, 2002), available at <http://www.cidh.org/annualrep/2002eng/Colombia.12009.htm> (finding that civil remedies are not an “effective and sufficient means for prosecuting, punishing, or making reparation for the consequences of the homicide or extrajudicial execution of persons protected by the Convention.”); see also Inter-American Commission on Human Rights, Third Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II.102, doc. 9 rev. 1, ¶ 3 (Feb. 26, 1999), available at <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm> (noting that “the requirement of a criminal proceeding derives from the fact that other proceedings do not provide for an adequate sanction for most human rights violations, which would also generally constitute criminal acts.”).

²⁶³ Velásquez-Rodríguez Merits, *supra* note 220, ¶ 174 (“The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”)

²⁶⁴ *Id.*, principle 12.

²⁶⁵ *Id.*, principle 12.

police shootings are neither adequately investigated nor prosecuted. In those rare instances where the DPP charges the police officers, a pervasive lack of impartiality and other institutional weaknesses lead to acquittals in almost every case.²⁶⁶

Until these systemic issues are addressed and corrected, the Gordian knot of police impunity for extrajudicial executions in Jamaica will not be cut. Reform of the DPP and judiciary is thus a pre-requisite to guaranteeing that prevailing standards of independence and impartiality are institutionalized and some degree of accountability achieved.²⁶⁷ Without comprehensive institutional reform, victims of fatal police shootings will continue to be denied their rights, as provided for under Jamaican and international law, to justice, an effective remedy, and adequate reparations.

Jamaica maintains that under its Constitution the DPP has exclusive authority to institute, continue or terminate any criminal proceedings and that no other authority may interfere with the DPP's decisions in this regard. A similar point is made about the judiciary, which as an independent branch of government is not subject to external control or oversight. This position, however, is misleading, and serves to perpetuate the current state of non-compliance in which Jamaica finds itself under the American Convention. In this regard, the Inter-American Commission in the Michael Gayle case categorically affirmed that:

domestic legislation and procedures, including the decisions taken by bodies like the DPP [or the judiciary], must accord with the State's international human rights obligations and *the constitutional status of such bodies cannot be raised as a defense against the State's international responsibility for inadequacies in this regard*. In cases [...] involving violations of the right to life perpetrated by state agents, international standards require that those responsible be prosecuted and punished, and *the State must take the legislative or other measures necessary to fulfill this obligation*.²⁶⁸

C. Conclusion

Part III establishes that the widespread and systematic practice of fatal shootings by Jamaican police, a substantial percentage of which are extrajudicial executions, produces egregious violations of American Convention Articles 4 (Life) and 5 (Physical Integrity) on a continual basis. At the same time, the virtually absolute failure to act diligently to prevent such abuses, or to adequately investigate and punish the police perpetrators of extrajudicial, arbitrary or summary executions, leads to further grave violations of Convention Articles 1(1), 2, 8, and 25. In order to begin to redress this situation, Jamaica is obligated under international human rights law to adopt, implement and/or enforce a wide array of measures in line with international standards governing the conduct of law enforcement officials, the use of force and firearms, and the investigation of extrajudicial killings. Until it succeeds in preventing these abuses, punishing

²⁶⁶ See e.g. R v Everaldo Robinson (Jury in the Home Circuit Court returned "not guilty" verdict on Feb. 14, 2008).

²⁶⁷ See generally JFJ Reform Initiative Report, *supra* note 41, at 19-35 (setting out JFJ's suggestions for reform including the creation of a judicial code of conduct, a procedure whereby the general public could bring complaints alleging breaches of the code, an investigatory process for inquiry into such matters and ultimate adjudication if warranted).

²⁶⁸ Michael Gayle Case, *supra* note 23, ¶ 101 (emphasis added).

police perpetrators and providing reparations to victims, Jamaica will remain substantially out of compliance with the American Convention, as well as its other international human rights commitments.