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JAMAICA: NOW IS THE TIME TO LEGISLATE TO GIVE JAMAICA'S POLICE OVERSIGHT MECHANISMS POWERS TO CHARGE AND PROSECUTE

Open letter to Prime Minister Andrew Holness

Dear Prime Minister,

We write at a time when the world is experiencing a collective moment of outrage and grief for the killing by police of George Floyd in the United States. People and movements are demanding accountability and justice everywhere. The outrageous abuse of power and sickening public killing of a black man and many other black people before has mobilized generations of people to call for deep structural reforms that tackle institutionalized racism, discrimination and impunity and the way it manifests in policing.

Amnesty International has reported on unlawful killings by the police in Jamaica for more than two decades and written multiple reports on the issue.¹ Our most recent report, *Waiting in Vain: Unlawful police killings and relatives' long struggle for justice*,² detailed how Jamaican young men, especially those in marginalized and disenfranchised neighbourhoods, have been scarred by unlawful killings by the police, and their relatives, particularly mothers and sisters, left to face a long struggle for justice, as well as frequent intimidation and harassment by the police.

Our report also found that the establishment in 2010 of the Independent Commission of Investigations (INDECOM) has overhauled the country's system for police accountability for the better. Prior to the establishment of INDECOM, when a special unit of the police was entrusted with investigating and holding to account police alleged to have carried out human rights violations, impunity was commonplace.

Over the years, multiple reports also found that the failure of Jamaica's Director of Public Prosecutions (DPP) to prosecute police killings in a timely manner was a major barrier to justice, to prevent similar violations in the future, and to provide effective remedy and full

¹ See, Amnesty International, JAMAICA: Killings and violence by Police: How many more victims?, (Index: AMR 38/007/2001); Amnesty International, 'Let them kill each other': Public security in Jamaica's inner-cities, (Index: AMR 38/001/2008); Amnesty International, Public Security Reforms and Human Rights in Jamaica, (Index: AMR 38/001/2009); and Amnesty International, Jamaica: A long road to justice? Human Rights violations under the state of emergency, (AMR 38/002/2011)

² Amnesty International, *Waiting in Vain: Unlawful police killings and relatives' long struggle for justice* (AMR 38/5092/2016)



reparations for victims.³ Similarly, the Inter-American Commission on Human Rights in the case of *Michael Gayle v Jamaica*, which prompted the establishment of INDECOM, not only

found that the state failed to prosecute and punish the police officers responsible for Gayle's killing, but also clearly set out that the state cannot hide behind the excuse that it failed to prosecute because the DPP is independent and exercised discretion.⁴

Between 2005 and 2013, more than 200 people were killed a year by the police in Jamaica. However, according to information Amnesty International was able to gather, only a handful of convictions were made against police in Jamaica in more than a decade.⁵

In contrast, once INDECOM began to charge and initiate prosecutions against police officers in 2013, killings by law enforcement officials halved. In 2014, police fatally shot 115 people, compared to 258 in 2013, according to INDECOM, and the number of yearly killings since has remained below 200. In 2019, there were 86 fatal police shootings, the lowest number in almost 20 years, according to the oversight mechanism.⁶

More families than ever before have had the opportunity to seek truth and justice through the court system. At the time of writing, INDECOM has secured 21 convictions against law enforcement officials for criminal misconduct. Thirty-seven officials have also been acquitted of criminal wrongdoing, according to INDECOM.

Those interviewed by Amnesty International overwhelmingly believe the significant reduction in police killings in recent years has been the result of a deterring effect created by INDECOM's improved investigation and ability to charge and prosecute, rather than any structural reform of the internal operation of the police in Jamaica. Indeed, Amnesty International has found little evidence of a change in the way police operate in recent years.

³ See Amnesty International, *Waiting in Vain: Unlawful police killings and relatives' long struggle for justice*, (AMR 38/5092/2016), page 36-37; Amnesty International, 'Let them kill each other: Public security in Jamaica's inner-cities', (Index: AMR 38/001/2008), page 30; Amnesty International, *Amnesty International, Public Security Reforms and Human Rights in Jamaica*, (Index: AMR 38/001/2009) page 12; George Washington University Law School/JFJ, *Killing Impunity*, page 32

⁴ *Michael Gayle v. Jamaica*, Report number: 95/05 Merits, Case 12.418, Inter-American Commission on Human Rights, (2005), paragraph 101: "With regard to the exercise of the DPP's discretion in particular, the State has argued that under the Constitution of Jamaica, the DPP has exclusive authority in Jamaica to institute, continue or terminate any criminal proceedings and that the State cannot interfere with the DPP's decisions in this regard. As the Commission observed above, however, the international obligations assumed by a state cannot be superseded by or made subject to the domestic laws of that state...To the contrary, domestic legislation and procedures, including the decisions taken by bodies like the DPP, must accord with the State's international human rights obligations and 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 such as the present 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."

⁵ In 2016, Amnesty International requested further data from the DPP on the number of charges and convictions against police officers but did not receive a response. See also: Amnesty International, 'Let them kill each other': Public security in Jamaica's inner-cities, (Index: AMR 38/001/2008) p.27 and George Washington University Law School/JFJ, *Killing Impunity*, p.4.

⁶ See INDECOM, *Quarterly Report, October-December 2019*, Available at: <https://www.indecom.gov.jm/wp-content/uploads/2020/01/The-INDECOM-Quarterly-October-December-2019-4th-Quarter.pdf>



Since INDECOM's establishment, the Police Federation and other institutions have repeatedly challenged its statutory powers, on matters that could be clarified by Parliament. A recent judgement of the Judicial Committee of the Privy Council - Jamaica's highest court of appeal - in *Commissioner of the Independent Commission of Investigations v Police Federation and others* has held that Parliament in drafting the INDECOM Act explicitly gives the Commission an investigative role but did not also explicitly confer on it the powers to prosecute, which until now it has been exercising in cases of alleged police misconduct.⁷

Prime Minister, following this judgement, the question for your government is what powers do you wish to give INDECOM, a mechanism that has been effective in holding the police to account? And how does Jamaica wish to arrange its internal legislation to ensure it complies with international standards, and the recommendations in *Michael Gayle*, that require alleged human rights violations by law enforcement officers to be promptly, effectively, and impartially investigated and where appropriate, prosecuted?

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

At the time of writing, the US Congress is debating a police reform bill. Other countries across the world are reflecting on their own records on police killings and on the disproportionate impact excessive use of force of police has on marginalized groups and communities that have been historically discriminated against.

A motion calling for legislative changes to the INDECOM Act was also tabled in Jamaica's Parliament. Now more than ever, it is time for Jamaica to make similar reflections and to secure - not abandon - the practical achievements it has made through INDECOM, in holding police to greater account for human rights violations.

In 2015, Jamaica's Joint Select Committee of Parliament met to review the INDECOM Act and after considering submissions from academics, NGOs, the DPP, the Jamaica Constabulary Force, the Jamaica Defence Force, and the Police Federation recommended a number of revisions to the Act to clarify INDECOM's functions. Among other points, it recommended amending the Act to ensure that INDECOM can "institute and undertake criminal proceedings, which appear to the Commissioner on reasonable grounds, to relate to an incidence or offence under this act."⁸ To date, however, this amendment, and others, have not been made.

⁷ *Commissioner of the Independent Commission of Investigations (Appellant) v Police Federation and others (Respondents)* (Jamaica), Case ID: JCPC 2019/0098, (2020)

⁸ Report of the Joint Select Committee of Parliament on the Review of the Independent Commission of Investigation Act, page 5



Jamaica has many of its own victims of police human rights abuses. But rarely have the killings been filmed and gone viral on social media, galvanizing the kind of public outrage we have seen in recent days across the world. Nonetheless, Jamaican families, like all families, deserve the kind of transformational police reforms and access to justice people around the world are now clamoring for.

Prime Minister, we invite your government to seize this historic global moment and to work to amend the INDECOM Act in line with the recommendations made by the Joint Select Committee in 2015 and explicitly giving INDECOM the same powers to arrest, charge and initiate prosecutions as law enforcement officers. The significant reduction in police fatal shootings since 2014 is a clear indicator of INDECOM's effectiveness when given sufficient powers.

As NGO Jamaican's for Justice has asked: Can we reasonably expect officers to charge and arrest their fellow officers with independence and without favorable bias? The evidence Amnesty International has documented over decades suggests not.

Now is the time for Jamaica to safeguard its progress in holding the police to account and to demonstrate to the world Jamaica's international human rights commitments.

Yours sincerely,

Amnesty International