

# **JAMAICA**

**“...Until Their Voices Are Heard...”**

**The West Kingston Commission of Inquiry**

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## **Summary of Amnesty International's Conclusions**

1. The West Kingston Commission of Inquiry has failed to fulfil its obligations under international law to fully investigate the deaths of at least 25 people, killed on a balance of probabilities by state agents.
2. The Inquiry finds no-one responsible for the killings and fails to consider the possibility of criminal proceedings, in violation of international standards.
3. The report of the Commission fails to deal with the international standards which govern the use of lethal force, and the planning of the operation which commenced on 5 July 2001 in West Kingston.
4. Impunity for state killings will persist whilst the voices of the victims and their families are not heard, whilst there is no adequate explanation for the deaths and where those responsible are not held to account before the law.
5. Prevented by a number of factors from hearing the crucial evidence of the victims and the victim's families, the Commission was structurally biased in favour of the state.

## Who died?

27 people are believed to have been killed in West Kingston during 7-10 July 2001, including two members of the security forces. Figures for the numbers of people injured vary from around 57 to over 75. The Commission of Inquiry exonerated the security forces of liability for these deaths, despite failing to name a single deceased or injured person in its final report. Some names appeared publicly in newspapers and other media sources. The following list of names is derived from the media and from human rights groups:

1. Ashley Adams, 50
2. Desmond Brown, 43
3. Patricia Brown, 39
4. Clive Caffee, 40
5. David Clarke, 21
6. Sylvia Easy, 60
7. Derrick Fraser, 29
8. Larkland Garrison, 40
9. Delroy Goulbourne, 42
10. Everald Grant, 42
11. Cyrene Henry, 21
12. Corporal Mark Henry
13. Delroy Hopson, 43
14. Lance Corporal Kevin Lawrence, 22
15. Clarence Lord, 83
16. Clive Marshall (age unknown)
17. Ernest Nicholson, 38
18. Keneisha Reid, 19
19. Humphrey Ruddock, 41
20. Trew Seymour, 81
21. Daniel Spence, 72
22. Collin Thomas (age unknown)
23. David Thompson, 35
24. Howard Uptown, 55
25. Kevin Weller, 16
26. Peter Williams, 44
27. Kenneth Wood, 22

## 1. Introduction

### The violence in West Kingston

Between the 7<sup>th</sup> and the 10<sup>th</sup> July 2001 there were large scale disturbances throughout Jamaica, most significantly in the West Kingston area of the capital. The Jamaican Constabulary Force (JCF) initially claimed to have gone into the area to seize illegal weapons, which they understood were present, following intelligence received. This operation began in the early hours of the 5<sup>th</sup> July. The JCF together with the Jamaican Defence Force (JDF) state that they soon came under attack from armed men and used lethal force in order to respond.

As a result, at least 27 people were killed and over 60 were reported seriously injured. Two of the dead were members of the security forces.

For some three days many of the population of West Kingston were not able to leave their homes. Bodies of the dead were left to lie in the streets as it was not possible to remove them due to the constant gunfire.

### The West Kingston Commission of Inquiry

Following the incident there were immediate calls for a public inquiry. These calls were prompted in part by public concern over the use of deadly force by the security forces as well as the sheer scale of the incident.

The incident represented the latest in a long line of disputed confrontations between Jamaican citizens and the security forces. The Jamaican police have one of the highest *per capita* rates of police killings in the world and the murder rate of the country is one of the highest in the Western hemisphere (1,139 were killed in 2001).<sup>1</sup>

These and other concerns around the incident were responded to by the Prime Minister and Minister of Defence, P.J. Patterson, who recommended a Commission of Inquiry. The West Kingston Commission of Inquiry was subsequently created by proclamation of the Governor General on 9<sup>th</sup> August 2001 to enquire into and report on “all factors concerning the upsurge of criminal violence” since May 2001 in a number of urban communities, and other connected matters, under the Chair of the Honourable Justice Julius Isaac.

The Commission commenced hearings in September 2001 and the report of the Commission of Inquiry was published in June 2002. The total cost was estimated at around

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<sup>1</sup> Source: Interpol (<http://www.interpol.int/Public/Statistics/ICS/downloadList.asp>)

\$44 million (Jamaican). Amnesty International sent delegates to observe the inquiry on two occasions in October 2001.

### West Kingston: Scene of previous confrontations

The area in which the incident took place, Tivoli Gardens, is the local constituency of Edward Seaga MP, the leader of the opposition Jamaica Labour Party (JLP) and a previous Prime Minister of Jamaica.

#### What is a "garrison community"?

Garrison communities have been described as communities *"in which anyone who seeks to oppose, raise opposition to or organize against the dominant party would definitely be in danger of suffering serious damage to their possessions or person thus making continued residence in the area extremely difficult if not impossible. A garrison, as the name suggests, is a political stronghold, a veritable fortress completely controlled by a party. Any significant social, political, economic or cultural development within the garrison can only take place with the tacit approval of the leadership (whether local or national) of the dominant party."* (Report of the National Committee on Political Tribalism, July 23 1997, pp.5-6.)

The Carter Center estimates that 15 or 16 constituencies in Jamaica contain garrison communities, 'with some scholars estimating as many as an additional 23 constituencies at risk.' In a recent report, the organisation dated the creation of garrison communities back to the 1960s when

*"government sponsored housing projects were constructed and allotted along partisan lines. Over time, these developments ... expanded to consume complete communities, wherein residents aligned with one political party. Those belonging to the "other" party were forced to leave, thus limiting residents' opportunity to freely choose their political party affiliation and even impacting their ability to find employment that would cross party lines.... Party supporters, at times, used violence to enforce the supremacy of their allegiance. Thus, garrisons became "political fortresses", or safe seats, where the electoral results almost entirely supported one party, allegedly through electoral fraud and intimidation.' In some areas 'whole communities, and at time, whole constituencies, owe their allegiance to the political party' as MPs have dispensed 'much needed resources to potential voters in order to secure support."*

'Observing the 2002 Jamaica Parliamentary Elections, pp 21, available at <http://www.cartercenter.org>.

Tivoli Gardens is often referred to as a "garrison community". Residents of the area are predominately supporters of the JLP, the main opposition party.

Tivoli Gardens has seen previous reported 'confrontations' between the security forces and local citizens. Between 6 and 7 May 1997, there were reports of firearms clashes between residents of Tivoli Gardens and members of the security forces. Three women and a child were killed. The disturbances followed the fatal shooting of Rohan Fraser by the security forces on 24 April 1997 in disputed circumstances.

During the disturbances, reports were received that the security forces engaged in indiscriminate and unlawful shooting over the two days. It was alleged that clashes occurred between members of the

security forces who fired shots from the ground, from an armoured vehicle and from a helicopter, and heavily armed residents who fired from the ground and high rise buildings. There are conflicting accounts of many of the incidents that occurred over the two days and Amnesty International is not in a position to assess which of the accounts are accurate. However the organisation has received what it believed to be undisputed reports that in the course of the two days many shots were fired into and through the roofs of houses inhabited by residents who were reportedly not engaged in the clashes. There were similar allegations, which Amnesty International is unable to confirm or deny, that the events were politically motivated.

## 2. Scope of this report: international human rights law

This report uses human rights law as a lens through which to examine the adequacy of the Commission of Inquiry. Both the procedure of the Commission of the Inquiry and the final report

are considered in the light of human rights law governing both the actions of the security forces, including in situations of mass disturbances, and the requirements for proper investigations into allegations of human rights violations committed by

### Crime and the role of human rights law

Human rights law normally focuses on the actions of government forces. This is because its primary concern is with preventing the abuse of power by the state. This includes circumstances where the state fails to fulfil its positive obligations to protect its citizens. For example, states are required to act to prevent acts of violence – such as rape or other violent crimes - to investigate and punish these violations and to provide compensation and reparation to individuals.

Amnesty International has reported on and condemned killing and other acts of violence against civilians by armed opposition groups and other individuals in all circumstances, whether or not there is an armed conflict. For more on Amnesty International's work in this area, see [www.amnesty.org](http://www.amnesty.org).

agents of the state. Reference is made to law, standards, resolutions and decisions emanating from diverse international organs which apply international human rights law.

The attention given by human rights law to the abuse of state power does not mean that the role of law enforcement is questioned, nor that violent activity against law enforcement officials is sanctioned or condoned. Amnesty International recognises that policing is frequently a difficult and dangerous task requiring expert training and skills. The organisation also acknowledges that every year, a significant number of police officers are killed and others seriously injured in the performance of their duties.

Amnesty International recognizes that governments have a responsibility to ensure the safety of all of their citizens, through the strengthening of the criminal justice system along with other measures to ensure that those who kill, or commit other serious acts of violence, are brought to justice in accordance with due process of law. Amnesty International also urges governments to uphold their responsibility to care for those who have suffered harm through acts violating a country's criminal laws.<sup>2</sup> For more on AI's work with victims of crime, see the report, "*JAMAICA – The Braeton Seven – A Justice System on Trial: Questions and Answers*".<sup>3</sup>

### **3. The terms of reference of the Inquiry**

Under international law, a Commission investigating possible unlawful killings must determine (a) whether the killings were justified, and (b) if not, who should be held to account. There is nothing to prevent the Commission from recommending criminal investigations leading to prosecution.

The terms of reference of the Inquiry were originally published on 25<sup>th</sup> July 2001. A modified version appeared on 8<sup>th</sup> August 2001 to increase the geographical area of the investigation.

Many of the provisions of the Terms of Reference are relevant to the determination of matters of domestic politics and social problems. The matters which are most relevant with regard to the situation in international human rights law are those which address the use of force by the State, and the reasons for the use of such force (listed in an appendix to this document.)

The significant matters addressed include the conduct, deployment and operation of the security forces (para. 1(c) and para. 2(f)). Para. 1(c) deals with "the conduct of the security forces in carrying out law enforcement functions" in the area. Whilst this does not specifically mention aspects such as planning, training, equipping and controlling of the

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<sup>2</sup> This responsibility should be implemented through measures to ensure victims are able to access mechanisms of justice. Judicial and administrative mechanisms need to be established and strengthened where necessary to enable victims to obtain prompt redress for the harm that they have suffered. Procedures established to do this must be expeditious, fair, inexpensive and accessible and victims must be treated with compassion and dignity. (The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines "victims" as persons who "individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.")

<sup>3</sup> AMR 38.004.2003, [www.amnesty.org](http://www.amnesty.org)

security forces concerned, it allows such issues to be addressed. Paragraph 2(f), which requires the Commission to look into the "deployment, operation and conduct of the security forces" should be sufficient to satisfy the requirement, under international law, for proper consideration of the preparation and planning of the operation.

The terms also require an investigation into the "causes and circumstances" in which people lost their lives (2(b)) and any violations of rights of individuals (2(c)). These terms again allow the Commission to address important international human rights standards, but do not require them to do so.

The Terms of Reference encourage recommendations as to how the security forces should operate in the future, and also measures that will assist social stability.

## 4. The Right to Life under international law

This report is premised on the principle that the right to life – held to be the “Supreme Right” -- is guaranteed in international law and must thus be implemented by States in law, policy and practice.<sup>4</sup>

### The ‘Right to Life’ in Jamaica as protected by international law

As a state, Jamaica has chosen to ratify a number of international instruments which enshrine the right to life. These emanate from the framework of both the United Nations (UN) and the Organisation of American States (OAS). Thus, Article 6 of the UN International Covenant on Civil and Political Rights states:

*"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*<sup>5</sup>

and Article 4(1) the American Convention on Human Rights states:

*"Every person has the right to have his life respected. This right shall be protected by law, and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."*<sup>6</sup>

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<sup>4</sup> The Human Rights Committee (HRC) of the United Nations in its General Comment No. 1 on Article 6 has described it as "the supreme right" - GC 6(16), Doc.A/37/40, pp. 93-94. Adopted July 1982.

<sup>5</sup> Ratified by Jamaica on 3 October 1975.

<sup>6</sup> Ratified by Jamaica on 7 August 1978. The *American Declaration on the Rights and Duties of Man* also states (Article 1) that: "Every human being has the right to life, liberty and security of the person." This "instrument" is not a treaty but is considered to binding within the OAS

By ratifying these treaties, the government of Jamaica voluntarily agreed to adhere to and implement their provisions in law, policy and practice.<sup>7</sup>

### **The right to life and the use of lethal force by the security forces**

The deprivation of life by the authorities of the State is deemed under human rights law to be a matter of the utmost gravity. Specific provisions therefore exist in international law to deal with the use of lethal force by the security forces.

With regard to the use of firearms by security forces, the UN Human Rights Committee requires that states must “prevent arbitrary killing by their own security forces” as well as preventing “deprivation of life by criminal acts.” The requirement that any deprivation of life must not be “arbitrary” imposes a positive obligation on national governments to protect that right. This requires the state to act so as to ensure that::

- There are laws against the arbitrary deprivation of life. The law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities
- Any action by the security forces which causes deprivation of life must be in accordance with law, legitimate and proportionate to the threat posed
- There is an effective investigation of any suspicious deaths or deaths resulting from the use of force by law enforcement officers
- There are prosecutions of those who take life unlawfully.

### **Requirements for preparation and planning of operations**

Proper respect for the right to life under International law requires that the agents of the State have prepared and planned operations so as to avoid loss of life where at all possible. Consequently, a lack of proper preparation and planning of an operation where there is likely to be a threat of a violent response, leading to a loss of life, may result in a violation of the right to life under international law.

International tribunals have interpreted these legal requirements in circumstances very similar to those in West Kingston, where the issue has been the preparation and planning of

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juridical framework: Advisory Opinion of the Inter-American Court of Human Rights OC-10/89, Articles 1.2.a and 2d of the Statute of the IACHR and Article 49 of the Rules of Procedure of the IACHR.

<sup>7</sup> Citizens of Jamaica can also directly demand respect for their rights under the American Convention through the mechanism of the Inter-American Commission of Human Rights. This body has the power to receive individual complaints from citizens and to make a determination as to whether their rights under the American Convention have been violated.

police operations or where there is a possibility or likelihood that force may be used. One such case before the European Court of Human Rights (hereafter ECHR) was *McCann v UK* which dealt with the operation by the Special Air Squadron (SAS) at Gibraltar which resulted in the deaths of four unarmed members of the Irish Republican Army (IRA).<sup>8</sup> From these cases emerge the criteria of what the requirement for “proper planning” may involve:

- assigning a sufficient number of law enforcement agents and sufficient equipment to deal with an incident
- giving security forces adequate information about the incident or operation
- planning and controlling operations to the greatest extent possible to avoid recourse to lethal force.

### The use of force in international law

In interpreting the right to life guaranteed by the American Convention of Human Rights, the Inter American Court of Human Rights has stated that no more force should be used than is absolutely necessary, even when the State is considering those who may be armed:

#### European case law

In the case of *Aytekin v Turkey*, a soldier shot an unarmed man who drove through a check point. The Commission found that there was a breach of the right to life. Their reasons were that firstly, an insufficient number of soldiers had been assigned to the check point in order to deal with such incidents in a non lethal fashion, and secondly, that the soldiers had not been given adequate information: European Commission of Human Rights, 18<sup>th</sup> September 1997.

*“without question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State*

*is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action.”* (*Velásquez Rodríguez* case, at para. 154.)

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<sup>8</sup> (1996) 21 EHRR 97, Para. 194. In *McCann* the European Court held that Article 2(2) of the European Convention on Human Rights requires that lethal force should only be used when “absolutely necessary”. The Court stated that this requires the determination of two questions:

- (1) was the use of force *strictly proportionate* to the aims of the operation (prevent escape, quelling riot etc.) having regard to the nature of the aim pursued, the dangers of the situation and the degree to which the use of force might risk life.
- (2) was the operation “planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force”.

In another case the Court was considering an allegation of excessive force used to quell a prison riot, and found that the disproportionate use of force can amount to a breach of the right to life.

*“Although it appears from arguments previously expressed in this judgment that those detained in the Blue Pavilion of the San Juan Bautista Prison were highly dangerous and, in fact armed, it is the opinion of this Court, those do not constitute sufficient reasons to justify the amount of force used in this and other prisons where riots had occurred.”* *Neira Alegria v Peru* judgement (19 January 1995), at para. 74.

## **UN Standards on the use of force**

Other ‘guidelines’ have been formulated for the use of force in operations such as the disturbances in West Kingston in July 2001.<sup>9</sup> Jamaica has agreed these guidelines and has not sought to stand outside them, and the government would therefore be expected to respect them.<sup>10</sup> They include the following:

### **1. Necessity**

The *Code of Conduct for Law Enforcement Officials* states that:

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".<sup>11</sup>

### **2. Lethal force must be a last resort**

The *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (hereafter Basic Principles) expand the concept of necessity.<sup>12</sup> The Basic Principles state that law enforcement officials shall as far as possible apply non-violent means before resorting to firearms, and that they should only do so where other means are ineffective.

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<sup>9</sup> These have developed from cases brought before international tribunals with respect to the right to life in the context of police and army operations; most notably failures to prepare police operations so as to ensure the right to life is respected, and failures to investigate adequately breaches of the right to life.

<sup>10</sup> These guidelines do not class as binding international law, but they have been accepted by all the members of the United Nations and consequently are deemed to be essential criteria because of the near legal consensus that surrounds their application.

<sup>11</sup> Adopted by General Assembly of the United Nations on 17 December 1979 through Resolutions 34/169 (Article 3).

<sup>12</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders meeting in Havana, Cuba, between 27<sup>th</sup> August to 7<sup>th</sup> September 1990.

The principle applies even in cases involving riots or violent assemblies. Basic Principle 14 states: "In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary."<sup>13</sup>

### **3. Restraint and proportionality**

If firearms are to be used, Basic Principle 5 requires the exercise of restraint in order to respond proportionately, minimize injury, respect human life, ensure medical attention is provided and notify relatives at the earliest possible moment.

### **4. Warnings and identification**

When firearms have to be used, Basic Principles 9 and 10 require identification and warnings as to the use of firearms to be given unless pointless. The circumstances in which arms may be carried and used should also be specified in national rules and regulations.

### **5. Training**

The requirement to use lethal force only where necessary means that law enforcement officers must be trained appropriately, including to use force that is less than lethal in such circumstances. There is also the requirement for a proper command structure, as

*"In order to prevent extra-legal, arbitrary and summary executions, Governments shall 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."*<sup>14</sup>

The standards required are very high, even when dealing with the most dangerous of incidents. In the case of *McCann*, the European Court commented on the actions of the SAS soldiers stating that "their reflex action in this vital respect lacks the degree of caution in the use of firearms to be expected from law enforcement personnel in a democratic society, even when dealing with dangerous terrorist suspects".<sup>15</sup>

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<sup>13</sup> In the case of *Güleç v Turkey* the European Court found a violation of the right to life where lethal weapons had been used to quell a riot, even though no other weapons were available. Although the European Convention also contains a specific exception where action is lawfully taken for the purpose of quelling a riot or insurrection, it will not be appropriate to automatically resort to firearms: (1998) 28 EHRR 121, Paras. 69-73.

<sup>14</sup> United Nations *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (hereafter the 'United Nations Principles'), principle 2.

<sup>15</sup> *Op. cit.*, Para. 212.

## 5. Commissions of Inquiry under International Law

International law requires a full and independent inquiry into deaths at the hands of law enforcement officers. The inquiry must be able to address its conclusions in terms of the violations of the right to life. This broad requirement can be further analysed as follows:

### **Obligation to investigate deaths caused by the security forces**

Under international law there is an obligation on the State to investigate deaths caused by its security forces. This arises out of the positive obligation of States to protect the right to life which is protected in international treaties such as the International Covenant on Civil and Political Rights (ICCPR) (Article 6) and the American Convention on Human Rights (American Convention) (Article 4(1)), to which Jamaica is a state party.<sup>16</sup>

The Inter American Court of Human Rights has interpreted the investigative requirement of the right to life in the following way:

*“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”.*<sup>17</sup>

This will extend to using “*all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts*”.

The United Nations Human Rights Committee in interpreting the scope of the right to life has found that there is a “clear duty” to make full, thorough and effective inquiries concerning alleged violations.<sup>18</sup> The European Court of Human Rights in Strasbourg, interpreting the identical provisions in the European Convention on Human Rights, has decided that there must be a mechanism for reviewing the action of the state agents in order to

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<sup>16</sup> Jamaica signed the ICCPR on 19 December 1966 and ratified it on 3 October 1975. With effect from 1 January 1998, Jamaica became the first ever country to withdraw as a State Party to the (first) Optional Protocol to the ICCPR. (The first Optional Protocol is a treaty which grants jurisdiction to the Human Rights Committee - the treaty body of independent experts which monitors states’ implementation of the ICCPR - to consider communications brought by individuals who claim that a state party to the ICCPR has violated their rights guaranteed under the ICCPR. The HRC considers such communications along with its business during the course of its bi-annual meetings.) Despite this move, Jamaica remains obliged to implement the provisions of the ICCPR in policy and in practice.

<sup>17</sup> *Velásquez Rodríguez* case, at Paras. 174 and 175.

<sup>18</sup> *Bleier v Uruguay*, Doc.A/37/40, p. 130.

render the prohibition of arbitrary killings effective.<sup>19</sup> United Nations standards within the *Basic Principles* also state that “there shall be 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 ...”<sup>20</sup>

### **What kind of investigation must be carried out?**

International legal bodies and standards describe the manner in which such investigations must be carried out, in order to render the provision against arbitrary killings effective.

### **The investigation must be independent**

According to the American Convention of Human Rights, any investigation ‘must be undertaken in a serious manner and not as a mere formality preordained to be ineffective’.<sup>21</sup> It would be a violation of the investigative requirement of the right to life if the officers conducting the investigation are not independent of those under scrutiny.

In the *Velásquez Rodríguez* case the Court observed that where the same body investigated themselves, it would not be sufficient:

*“The [proposed investigation] resulted in an investigation by the Armed Forces, the same body accused of direct responsibility for the disappearances. This raises grave questions regarding the seriousness of the investigation.”*<sup>22</sup>

This led to a conclusion that there has been a breach of the Convention.

The *Velásquez Rodríguez* case was followed by similar criteria emanating from the European Court of Human Rights. In considering the investigative requirement of the right to life, the ECHR found that for an investigation process to be properly ‘independent’, there must be hierarchical, institutional and practical independence between those responsible for the incident, and those investigating it.<sup>23</sup>

The fact that there is later objective scrutiny of the earlier decision will not mean that the investigation is considered to be sufficiently impartial, as the initial investigation will be

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<sup>19</sup> *McCann v UK, supra*, Paras. 191, 161, “It is essential both for the relatives and for public confidence in the administration of justice and in the state's adherence to the principles of the rule of law that a killing by the state is subject to some form of open and objective oversight”, as, without such a procedure, the prohibition of arbitrary killings would be rendered ineffective.

<sup>20</sup> At Principle 9.

<sup>21</sup> *Velásquez Rodríguez* case at Para.177.

<sup>22</sup> At Para. 180.

<sup>23</sup> *Jordan v UK*, Judgement of 4 May 2001, at Para. 106.

flawed. The ECHR, in dealing with the power of a review body to order the senior police officer in Northern Ireland to refer a case to the DPP stated that such a power “is not, however, a sufficient safeguard where the investigation itself has been for all practical purposes conducted by police officers connected with those under investigation”.<sup>24</sup>

### **The investigation must be rigorous and thorough**

The Inter American Court of Human Rights has stated that the investigation requires “an effective search for the truth by the government”.<sup>25</sup> This implies a number of factors to be taken into account in the course of an investigation.

The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (hereafter the ‘UN *Principles*’) require a thorough and professional investigation (Principle 9) with full resources (Principle 10) and appropriate expertise (Principle 11).

In considering the same issue, the European Court of Human Rights has found that there is a need to collect and preserve evidence found at the scene of an extrajudicial execution: “As an independent investigating official he should have been alert to the need to collect evidence at the scene, to make his own independent reconstruction of the events and to satisfy himself that the deceased, despite being dressed as a typical farmer, was in fact a terrorist as alleged.”<sup>26</sup> More recently in a series of cases dealing with police killings in Northern Ireland, the European Court has identified the following factors as contributing to a violation of the investigative requirement on the right to life:

- Failure to interview pertinent eye-witnesses.
- Failure to exercise due control over the scene of the incident.
- Failure to seek follow-up information from persons present at the scene of the incident.
- Failure to adequately account for the discharge of weaponry.
- Failure to ensure the adequate execution of forensic tests at the scene of the incident.
- Failure to interview relevant personnel immediately after the incident though access to same was easily facilitated.
- Failure to allow access for medical and religious personnel to attend to the deceased.
- Failure to contact family members to indicate that the deceased had been killed by an agent of the State.

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<sup>24</sup> *Ibid*, at 120.

<sup>25</sup> *Velasquez and Rodriguez*, at Para. 177.

<sup>26</sup> *Kaya v Turkey*, 1998-I No 65, 19 February 1998, Para. 89.

- Failure to protect sensitive information concerning the deceased prior to death.<sup>27</sup>

### **Autopsies must be professionally and independently carried out**

An autopsy is of no value if it is carried out without proper information, proper resources, a proper purpose and with impartiality. The UN *Principles* state the following:

*“12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.”*

The European Court has found a perfunctory autopsy to contribute towards a violation of the investigative duties of the right to life:

*“It cannot be maintained that the perfunctory nature of the autopsy performed or the findings recorded in the report could lay the basis for any effective follow-up investigation or indeed satisfy even the minimum requirements of an investigation into a clear-cut case of lawful killing since it left too many critical questions unanswered.”<sup>28</sup>*

### **The investigation must be able to produce outcomes**

The Inter American Court has found that for an investigation to be sufficient to satisfy the requirements of the right to life “an investigation must have an objective and be assumed by the State as its own legal duty”. *Velásquez Rodríguez Case* at para. 177. The duty to investigate facts “continues as long as there is uncertainty about the fate of the [victim]. At para. 181.

The UN *Principles* state the following:

*“9. The 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*

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<sup>27</sup> See the joined cases of *Kelly, Shanaghan, McKerr and Jordan v UK*, ECHR, 4 May 2001.

<sup>28</sup> *Kaya v Turkey*, 1998-I No 65, 19 February 1998, Para. 89.

*about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.”*

### **The next of kin must be involved**

The UN *Principles* state:

*“16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.”*

The ECHR in the case of *Jordan* found that for the procedural and investigative requirement to be satisfied, it is necessary for the next of kin to be involved in the investigative procedure, so that they are able to protect their legitimate legal interests in a matter of crucial importance to them.<sup>29</sup>

### **Guidance on Commissions of Inquiry: the “Minnesota Protocol”**

Important guidance as to how to ensure that inquiries conform to international human rights law is provided in the form of the “Minnesota Protocol”; a model protocol developed by the UN for a legal investigation of extra-legal, arbitrary and summary executions.<sup>30</sup> The procedures were derived from the experience of major inquiries mounted to investigate executions or similarly grievous cases of human rights violations. The Minnesota Protocol outlines in substantial detail requirements for all aspects of a commission of inquiry. The requirements include:

**1. Power of the commission** - The commission must have authority to obtain all necessary information including powers to compel testimony under legal sanction, order production of documents and protect witnesses and other sources. Other powers should include the authority to issue a public report, to prevent burial of bodies until an adequate post-mortem has been performed and to conduct on-site visits.

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<sup>29</sup> *Jordan v UK*, supra, at Para. 123.

<sup>30</sup> Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (“Minnesota Protocol”).

**2. Choosing expert advisers** - Technical expertise in areas such as pathology, forensic science and ballistics should be available to the Commission.

**3. Choosing investigators** - Independent investigators are required in order to develop evidence.

**4. Protection of witnesses** - Witnesses should be protected from violence and intimidation with appropriate measures. Potential witnesses who should be identified include suspects, relatives and friends of the victim/s, individuals residing in the area; people who knew or had knowledge of the suspects; people who may have observed either the crime, the scene, the victim or the suspects and people having knowledge of possible motives.

**5. Receipt of evidence** – Powers to receive evidence should include the power to compel evidence, the use of witness statements as a first step in gathering evidence and the review of relevant evidence from other proceedings. Witness statements can be an important source of evidence if the author is too afraid to testify.

**6. Rights of parties** – Families of the deceased and their legal representatives should be entitled to present evidence and be informed of all information relevant to the investigation. Other interested parties should have the opportunity of being heard. All witnesses should be permitted legal counsel if they are likely to be harmed by the inquiry. There should be an opportunity for effective questioning of witnesses by the commission.

**7. Evaluation of evidence** – Guidelines to determine relevance, veracity, reliability and probity of evidence include:

- Reliability of hearsay evidence must be considered carefully before being accepted as fact.
- Testimony not tested by cross examination is to be treated with caution.
- Evaluation of oral testimony should be based on the overall credibility of the witness.
- Corroboration of evidence from several sources will increase probative value.

**8. Report of Commission** – A public report released within a reasonable period of time should include method(s) for evaluating evidence, applicable law and conclusions based on this and on findings of fact. Where findings are not unanimous, commissioner(s) should file a dissenting opinion.

**9. Response of Government** - The government should either reply publicly to the report or indicate the steps it intends to take in response.

## **6. Commissions of Inquiry under domestic law**

### **Commissions of Inquiry Act 1873**

The West Kingston Inquiry was carried out under the terms of the Commissions of Inquiry Act 1873. This allows for the Inquiry and the individual Commissioners to be appointed by the Governor General. It provides in very short form for the procedure to be adopted, and outlines the powers of the Commission to enforce the attendance of witnesses.

Public inquiries in countries which share the English legal system ('common law') benefit from comparative experience in other countries. In the United Kingdom, the 'Royal Commission on Tribunals of Inquiry' in 1966 chaired by Lord Justice Salmon included a comprehensive study of the practice of public inquiries in the UK and around the world.<sup>31</sup> The 'Salmon Report' as it was known, outlined best practice with regard to the treatment of witnesses and the rights of cross-examination. It outlined six 'cardinal principles' which include proper representation for those against whom allegations have been made, and the right for those witnesses to cross-examine by counsel witnesses who give evidence against them.

Combined with the international standards, these principles give a great deal of guidance for the West Kingston Commission of Inquiry.

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<sup>31</sup> The inquiry arose out of the scandal surrounding Jack Profumo, the British Secretary State for War, and the fact that he was sharing his mistress with the Russian Naval Attaché in London and had denied this in Parliament.

## 7. Conduct and procedure of the Commission

Despite falling within the terms of reference of the West Kingston Inquiry, the requirement to undertake a full and independent inquiry into the deaths that occurred in July 2001 in West Kingston was not properly addressed either in the Commission hearings or in the subsequent report.

### 1. The investigative process: failure to ensure independent investigation

At the beginning of the inquiry, counsel to the Inquiry, Miss Velma Hylton QC, applied to have an independent investigator in order to collect evidence independently. Her request was refused. Consequently, in terms of investigations the Inquiry was forced to rely upon officers from the very police force that was the subject of the inquiry.

As outlined earlier, an independent investigator is a fundamental requirement to satisfy the investigative element of the right to life. Case law from other jurisdictions underlines why independent investigation is so important under international law.<sup>32</sup>

The reliance of the Commission on the police in order to collect evidence had an extremely dramatic effect on the independence and effectiveness of the inquiry and resulted in the Commission's failure to ensure the full, thorough and effective inquiry required under Articles 6 of the ICCPR.

The Commission of Inquiry had the power to call evidence and witnesses. However, dependency on the police — rather than independent prosecutors — meant that the Commission was likely to be unaware of the evidence that might be available. This resulted in lost opportunities for the Inquiry to test the evidence before it and seek the truth.

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<sup>32</sup> The Strasbourg Court of Human Rights has found violations (of similar provision in the European Convention) where the investigative mechanism was conducted by civil servants rather than independent prosecutors. *Güleç v Turkey* (1998) 28 EHRR 121, Paras. 80-82. In another case involving suspicious deaths in Turkey the Court criticized the public prosecutor: "As an independent investigating official he should have been alert to the need to collect evidence at the scene, to make his own independent reconstruction of the events and to satisfy himself that the deceased, despite being dressed as a typical farmer, was in fact a terrorist as alleged...It cannot be maintained that the perfunctory nature of the autopsy performed or the findings recorded in the report could lay the basis for any effective follow-up investigation or indeed satisfy even the minimum requirements of an investigation into a clear-cut case of lawful killing since it left too many critical questions unanswered". *Kaya v Turkey* (1998) 28 EHRR 1, Para. 89.

The fact that there was no independent investigation means that the Inquiry was severely handicapped in the search for the truth from the very beginning. Whilst this Commission of Inquiry is not a criminal prosecution, it may well be the closest that the victims and their families will get to one, and arguably had the power under the Terms of Reference to recommend prosecutions.

Unfortunately this mirrors a more widespread problem relating to the investigation of allegations of excessive force by the security forces in Jamaica. Amnesty International has repeatedly documented the Jamaican authorities' failure to ensure independent and impartial investigations and prosecutions into killings involving the security forces where credible evidence exists to suggest *prime facie* unlawful killing.<sup>33</sup>

## **2. Examination of witnesses: the failure to challenge evidence**

The procedure adopted by the Inquiry for calling witnesses severely reduced the Inquiry's ability to test evidence and get to the truth.

Under the *Procedures for the Commission of Inquiry into the Upsurge of Criminal Violence in a number of Urban Communities in the Kingston Metropolitan Region*, decided upon at the beginning of the Inquiry, it was decided that all witnesses were to be called to give their evidence by Commission Counsel. The Commission had originally intended for each counsel to call his own witnesses, and then for Commission Counsel to cross-examine. This would have given Commission Counsel the opportunity to test their evidence and search for the truth.

In an adversarial system, each witness is called by counsel who will then guide the witness through their evidence, eliciting the contents of their statements previously made to the police during the investigative process. The witness is then cross-examined by counsel for the other party, who will attempt to point out inconsistencies, inaccuracies and errors, and put alternative suggestions as to the events that occurred. By cross-examination, counsel is able to discredit the evidence of a witness and find the truth.

Due to the procedure adopted by the Commission, Miss Hylton was required to elicit from the police witnesses the content of their statements without any challenge being made by her to their evidence. They were then 'cross-examined' by counsel representing the JCF, who not surprisingly did not challenge anything the police officers had said. Only counsel for the public defender was in a position to challenge their evidence by genuine cross-examination and to suggest alternative scenarios.

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<sup>33</sup> See for example *Killings and Violence by Police: How many more victims?* (April 2001) and *JAMAICA The Braeton Seven: A Justice System on Trial* (March 2003) at [www.amnesty.org](http://www.amnesty.org).

A side effect of this procedure was that Commission Counsel was put in the position where it was for her to prevent any inadmissible or potentially unfair questions from counsel for the public defender, leading to the impression that her role was to 'protect' the witnesses. This was a natural consequence of the procedure adopted.

The same problem was highlighted over 30 years ago by the Salmon Report. The Commission in that case were concerned that witnesses were both examined and cross-examined by Counsel to the Inquiry:

*"If, when being examined by his own solicitor or counsel, a witness should seemingly depart from what he has said in his written statement to the Treasury Solicitor, his cross-examination by counsel for the Tribunal will be much more effective than if the witness had been examined in the first place by some other counsel for the Tribunal...The purpose of examination in chief is to establish the evidence being given by the witness. The purpose of cross-examination is to test and if necessary to destroy it."<sup>34</sup>*

The procedure adopted meant that it was virtually impossible for the evidence of state agents to be properly tested, and the Commission merely established the evidence without challenge. Such a procedure fails to fulfil the fundamental requirements for an investigation into state killings, as required by the right to life as protected by international law.

### **3. Representation of the Victims: leaving victims unheard**

The inquiry failed to ensure that victims of killings or injuries by the state and their families were adequately represented. How did this fundamental failure of the investigative and fact-finding process occur, when numerous lawyers were introduced to the Commission at the beginning of the inquiry?

At the preliminary hearing of the Commission of Inquiry on 4<sup>th</sup> September 2001, the representatives of various groups were introduced to the Commission.<sup>35</sup> At that stage, there appeared to be a team of 8 lawyers, including one Queen's Counsel, representing the Citizen's Associations of Denham Town and Tivoli Gardens, and other injured persons. These lawyers would, it must be assumed, be representing the views and interests of the victims and their families. There was also further representation by a team of 3 experienced lawyers for the Public Defender's Office.

However, during the course of the Commission hearing, all eight of the lawyers for the victims withdrew from the hearings. This followed a decision by the Commission of Inquiry, subsequently upheld by the Chief Justice in the Supreme Court, that two of the

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<sup>34</sup> Salmon Report, at Para. 57.

<sup>35</sup> Report, at Para. 2.7.

lawyers, Mr Atkinson and Mr Dabdoub, who now represented two local politicians rather than the victims, could not cross-examine witnesses except when their clients were mentioned.<sup>36</sup> Following that ruling, all the counsel who had originally been representing the victims, withdrew.<sup>37</sup>

Whilst some of the counsel were appearing for individual clients, the others of the original team were still representing the victims. Indeed, one of them, Mr Henriques, made a statement on 10<sup>th</sup> September 2001 that this was still the case:

*"First of all sir, I wish that the Press could be more accurate in its reporting. On Tuesday, I indicated to the Commission here that I appear for the Citizens Associations of Tivoli Gardens, Denham Town and other persons. To my chagrin, amazement, I see that the largest newspaper has it that I appear for a political party which is not so."*

On 2<sup>nd</sup> November 2001, a public announcement was made by the Jamaica Labour Party, that their lawyers would not be returning to the hearing.<sup>38</sup> Following their withdrawal from the Commission, it was thought that the views of the victims would be represented by counsel for the Public Defender's Office, and that statements collected on behalf of those victims would be forwarded. The report indicates that statements had been taken and that the witnesses were expected to be called, but that they never were. Some people were represented by counsel for the Public Defender, and some statements were passed to counsel for the Commission. The final result was that no civilian witnesses from the area testified.<sup>39</sup>

The failure to ensure proper representation for the victims of killings by the state was so serious as to seriously undermine the effectiveness of the investigation, resulting in a failure to meet an essential requirement of international standards that could amount, in Amnesty International's view, to a breach of the right to life as protected in Article 6 of the ICCPR and other international instruments.

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<sup>36</sup> The Supreme Court held that there is no automatic legal right to cross-examination, rather, that decisions on the right to cross-examine are purely discretionary matters for those leading the Inquiry and that the refusal to allow cross-examination is not per se unfair or in breach of the rules of Natural Justice.

<sup>37</sup> Report, at Para. 2.27.

<sup>38</sup> Report, Para. 2.31.

<sup>39</sup> Report, Paras. 2.50, 2.52 and 2.53.

#### 4. Protection of Witnesses

Many of those called as witnesses to the inquiry were to give evidence around the operations of the police and the military. Despite this fact, the lack of any effective independent witness protection programme made it effectively impossible to call independent witnesses – a fundamental flaw in the inquiry process.

One reason why witnesses refused to give evidence was because they were reported to be frightened to do so as they were concerned that there would be reprisals from the police. During the course of the Commission a number of persons were subpoenaed to give evidence, and then refused to do so, even when it was suggested that police officers would be excluded whilst they gave evidence, or that they could give their evidence in private (*'in camera'*). Amnesty International observers were able to visit at least one of those witnesses in their home environment. At that time the witness was willing to give evidence.

The report states in paragraph 2.64 that the reasons witnesses gave for refusing to testify were 'unpersuasive'. Considering that part of the terms of reference of the inquiry were to investigate police killings, it would seem reasonable to assume that the police would be reluctant to have findings adverse to them. Where there is a *prima facie* case that some of those killed were shot by the security forces it is reasonable to draw the inference that families of the victims might be in fear of giving evidence.

In particular, it appears that the only system for either bringing witnesses to court or for protecting them from any fear of physical violence is by using the very police force which is under investigation. This failure to protect the witnesses adequately occurred despite the fact that the terms of reference appeared to have acknowledged the possibility of reprisals as an issue and to have contemplated the introduction of measures to deal with this, such as the possibility of hearing witnesses in private.

Amnesty International is concerned that the current system for witness protection in Jamaica does not enjoy public confidence, despite recent reforms towards the end of the Commission hearings which put the previously administrative procedures for witness protection on a statutory footing and expanded the scope of those eligible for protection. The system is still not independent from the police; it is administered by the same authority that administers the police (the Ministry for National Security), and access is still obtained via the police, though it may also be obtained via the DPP.

This lack of independent protection so as to ensure that reluctant witnesses could attend court was such a failure as to make it virtually impossible to call independent witnesses, and must be considered a fundamental flaw in the operation of the Commission.

## **5. Compellable Witnesses**

The Commission of Inquiry complained in paragraph 2.67 that it had no powers to compel witnesses to attend and give evidence. Instead they were reliant on Magistrates' powers to compel attendance. Significant witnesses did not give evidence before the Commission.

Again, this would appear to be a fundamental procedural failure rendering the Commission toothless, and meaning that the fact-finding process was fundamentally flawed.

## **6. An imbalanced Commission**

The representation by counsel – 8 lawyers representing the state and only 2 lawyers representing citizens -- was extraordinarily imbalanced. The result of the 'walk-out' by the lawyers for the victims meant that the two-person team of the office of the Public Defender were the only ones representing ordinary citizens. All the other representatives were responsible to the government in one way or another. They constituted 3 lawyers for the JCF, 3 for the JDF, 1 for the PNP, one for the Attorney-General. This imbalance was exacerbated by the procedure adopted for calling witnesses which meant that Commission Counsel was not required to cross-examine police witnesses but rather to treat them as her own witnesses.

Similarly, once it became clear that ordinary witnesses were not prepared to appear to give evidence, the situation became more imbalanced. The majority of witnesses who were called to give evidence on the issue of the killings were either members of the JCF or members of the JDF, or otherwise employed by the government. In such circumstances, the Commission only heard one side of the story, and so it cannot be regarded as being able to produce a balanced decision on the facts.

## **7. Closing submissions**

The imbalance of interests before the Commission became blatantly clear during final submissions. In any court hearing, the final submissions of Counsel are of fundamental importance. It is only then that the lawyer is able to draw together the evidence elicited during cross-examination and invite the tribunal to draw certain conclusions from the evidence. It is only then that counsel is able to address the tribunal on matters of law. It is only then that counsel is able to apply the facts to the law and state what decision the tribunal should come to.

In the West Kingston Inquiry, no submissions were made at all on behalf of the victims of the police killings. The lawyers for the families and for the residents of the area had already withdrawn. The lawyers for the public defender were not instructed for the final two weeks of the inquiry and consequently withdrew. Written or oral arguments were presented by the lawyers for the JCF, the JDF, the Attorney-General of Jamaica and the People's

National Party – all of whom are part of the executive branch of the government. At the most important part of the whole Commission only one voice was heard: the voice of the State.

Significantly, there were no submissions on the relevant international standards applicable in incidents of state killings such as the events in West Kingston. The submissions from Counsel for the Commission accepted absolutely the behaviour of the security forces that day, suggesting that the security forces had the right to fire on women and children and alleging that these had shielded gunmen during the operation. Counsel for the Commission is reported to have stated that, “if the police and the rest of the security forces had not taken action to repel force with force that day... we may still have been shovelling up bodies in West Kingston” and that

*“I do not understand the logic behind saying to both the police and soldiers, that because there are women and children in front of gunmen, they cannot return the fire. In my respectful submission, if the women and children deliberately put themselves between the law and order forces...to enable those gunmen behind them to fire at the security forces and to fire at civilians, I for one do not understand why, in all the circumstances, they cannot return fire. ... For the period July 7, July 8 and July 9, I have not seen any evidence adduced before this Commission which could lead me, looking at it from every quarter, to fault any member of the security forces who was out there that day. ... [the vast majority of civilians killed] ‘apart from gunmen must have been caught in the crossfire between opposing forces. In that kind of situation how can the security forces be blamed for the death of those persons?’”*

With legal advice suggesting that the police had done nothing wrong, the findings of the Commission were a foregone conclusion. The result of the factors outlined above is that the Commission of Inquiry was structurally biased in favour of the state and against its ordinary citizens.

## 8. The report of the Commission

### Factual insufficiencies

Due to the failings in the investigative procedure, the Commission only heard one side of the story when considering the important question of how the killings occurred, and whether anyone should bear responsibility for the deaths. The Commission also failed to hear any independent expert evidence. Despite these failings in its responsibilities under international law, the Commission was prepared to reach conclusions on the basis of very limited evidence.

Amnesty International is concerned that on such important issues as the manner of death of civilians and the examination of the actions of the police and military, the lack of any opposing evidence should not have led to automatic acceptance of the evidence of the State.

### Evidence on dead and injured

The evidence with regard to the dead and injured was dealt with in an extremely summary fashion. Those killed or injured are never identified by name in the report, despite the requirement under international law for investigations into such deaths to establish, at a minimum, the identity of the victims. The report gives very limited information about the victims, for example concluding that:

*“from a very few written statements submitted by relatives, we infer that their deceased relatives were either shot to death at their respective workplaces or while on their way to work. Two persons were reportedly shot while in their homes; fifteen (15) bodies were removed from the streets of Denham Town on Monday 9 July.”<sup>40</sup>*

The circumstances in which individuals died are not explored in depth, nor the reasons that their bodies were left in the street for so long.<sup>41</sup> The report makes a distinction between deaths of ‘armed individuals’ and deaths of ‘innocent bystanders’, without any supporting evidence for doing so. The report concludes that most of the dead were killed in “critical areas where gun-fire [was] exchanged between the Security Forces and armed civilians”; suggesting a finding by the Commission that none of the dead were armed.<sup>42</sup>

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<sup>40</sup> Para. 10.5

<sup>41</sup> In respect of the location of the bodies, the report states merely that ‘bodies found on the streets of Denham Town in areas where there was intensive gun fire between the security forces and armed civilians were more likely than not involved either in the assault on the security forces or caught in the cross-fire between the opposing forces’, Para. 10:18

<sup>42</sup> Para.10.4

However the report then states that “some of these people were involved in illicit gun operations”, without producing any evidence to justify this statement.<sup>43</sup>

In many cases, the report’s conclusions rely on the evidence of a single officer. At 12.18 for example, the report finds that the police Command Post “withstood even more serious attacks [from armed civilians]” purely on the basis of Senior Superintendent Adams’ testimony that while there he “... saw a lady walk from the direction of Spanish Town Road and threw[sic] an item in the Command Post through a window which also exploded violently causing debris, windows to have shattered[sic]...”

Similarly the report fails to draw any conclusions as to the causation of injuries. The report refers to the conflicting evidence of the numbers of the injured. Instead of examining in-depth the basis for the differing estimates, the report concludes merely that it can not state how the injuries were caused, suggesting that the victims were either involved in assaulting the security forces or caught in the cross fire.

Only in one case does the report make a finding of fact in relation to an injury caused by the security forces in an identifiable, individual case; that of Kaydian Bourne (not identified by name in the report). Kaydian Bourne was shot whilst on her bed which was on the other side of an external wall with no windows in it. The report appears to conclude that it was probable that she was shot by the Security Forces since ‘the position of the building in relation to the Command Post, and the fact that the Security Forces were known to have fired in that direction support an inference that the bullet alleged to have caused injury to the young girl, could have been discharged from the Barrett 82.’<sup>44</sup>

### **Expert scientific evidence**

International standards require a proper post-mortem and for other scientific and ballistics evidence to be obtained. This evidence is crucial in order to obtain a full picture to establish the cause and circumstances of death. The report’s conclusions that there were no violations of the right to life by the security forces are nevertheless made in almost complete absence of consideration of this evidence. This objective evidence could have been used to evaluate and probe the version of events given by security forces or others in witness statements or oral testimony.

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<sup>43</sup> Paras. 10.8, 7.23.

<sup>44</sup> Paras. 10.15 and 10.18

### **Post-mortem evidence**

According to experts in Forensic Medicine, an adequate post mortem should provide information on the location of the gunshot entry wounds, the direction of fire, the type of weapon used and whether the deceased was shot at close range or from a distance. In many instances this could be expected to offer vital information as to how the deceased died, or equally importantly how the deceased could not have died; close range shots in the back of the head, for example, suggesting an execution-type killing, or multiple shots to the back indicating that the victim was not facing the shooter.

Although 27 people died, the exhibits list shows that post mortems were only obtained for 22 of the deceased. Seeking to explain this, the report states that many bodies were 'too decomposed' for forensic testing.<sup>45</sup> This is a total misrepresentation of the nature of forensic examination. A Professor of Forensic Pathology who reviewed the statement on behalf of Amnesty International, Derrick Pounder, commented that, "there is no such thing as a body which is too decomposed to be subject to a useful autopsy, unpleasant though the task may be. While it may be generally true that evidence is gradually lost as the body deteriorates, important evidence can still be obtained weeks, months or even years after death, as the experience of investigating war crimes in the former Yugoslavia clearly demonstrates. The location of entry wounds, the direction of fire and the range of fire can be evaluated in decomposed bodies, the examination of which is a normal and everyday part of forensic practice."<sup>46</sup>

Those post mortem reports that were obtained are not referred to in any depth in the report's discussion of evidence. With respect to these, the report states only that they 'disclosed that the cause of death was gunshot wounds in all cases except one, which was by stab wounds.'<sup>47</sup> No attempt is made to examine the vital information – referred to above -- that should have been present on the reports.

### **Independent evidence**

The Commission did not secure independent forensic evidence obtained from sources other than state agencies, as is required under international law. International standards require states to ensure the right either to have post mortems observed by a qualified, independent expert or to have second independent post mortems undertaken. In Jamaica, post mortems are undertaken by an agency operating under the Ministry of National Security; the same ministry that controls, and has ultimate responsibility for, the police. In an inquiry as serious as this one in which prima facie evidence indicated a likelihood that deaths occurred at the hands of

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<sup>45</sup> Paras. 10.3 & 10.16

<sup>46</sup> Report to Amnesty International, June 2003.

<sup>47</sup> Para. 10.3

agents of the state, the Commission should have ensured that independent post-mortems were undertaken.<sup>48</sup>

The report refers to the involvement of police officers in removing bodies.<sup>49</sup> Similarly, photos appearing in national newspapers also showed some of the corpses of the deceased piled on top of each other, without any form of protective body bags or hand covers. The ‘clearing’ of bodies by police along with the failure to use protective covering raises further issues of contamination or destruction of evidence. Under international standards it would be expected that a pathologist would visit the scene of crime to record the position of the body; this is vital because it is necessary to see the bodies in context in order to evaluate the explanations given for their deaths. No consideration is made however of how the failure to secure independent forensic evidence may have affected the findings that could legitimately be inferred from such evidence.

### **Ballistics evidence**

Similarly, ballistics evidence --- the examination of bullets or bullet fragments extracted from the dead or recovered from the scene of death -- can determine the exact weapon used to fire. It can thus link bullets to individual weapons issued to the security forces.

The only ballistics evidence considered by the Commission is that obtained from Detective Superintendent Hibbert; a police officer from the same Constabulary Force under investigation by the Commission.

The evidence of that officer, which was accepted by the Commission, lacks the detail and completeness that would be expected in such a significant situation. For example, despite the fact that 27 people allegedly died, and oral evidence given by the security forces that a total of 15, 564 rounds of ammunition were fired by the security forces, the report only cites bullets from 3 of the bodies as being handed in for testing.<sup>50</sup> The report states that of the ‘three hundred weapons which were issued to members of the JCF and the JDF during the 7-10 July 2001 period... all... except nine were fired’, but does not state the number of rounds fired, where bullets were found, or whose weapons they were discharged from.<sup>51</sup> The examination of the sites of the shootings, which could reveal much important evidence as to lines of fire is also very cursory. In particular, the evidence from the Command Post and the Denham Town Police Station – allegedly the centre of much confrontation – is completely

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<sup>48</sup> The Commission would have been unlikely to have been able to ensure independent observation of the post mortems conducted by the state, since these were mostly completed before the Commission of Inquiry commenced.

<sup>49</sup> Para. 10.16

<sup>50</sup> Para. 10.12

<sup>51</sup> Para. 10.11

inadequate. At 12.20, the report merely cites that the officer observed ‘a number of bullet holes in the Command Post itself.’

The report accepts without question the limited findings of Detective Superintendent Hibbert. He concludes that he was ‘unable to say’ after tests whether bullets from the bodies of 3 deceased persons were fired from Security Forces’ guns and that ‘some of the bullets recovered were too fragmented to be matched with particular weapons’.<sup>52</sup>

The Commissioners made one visit to the scene of the incident. However, on their visit, the Commissioners appear to have examined critical areas, such as the Command Post, without being accompanied by forensics or ballistics experts, who could have assisted in interpreting vital information such as bullet markings on walls.<sup>53</sup>

### **Intelligence evidence**

On many occasions, the report accepts evidence that is described as the result of ‘intelligence’ without any apparent questioning of the provenance, accuracy or reliability of that information. For example, the report states that ‘there was intelligence’ with regard to the initial information as to the guns at Denham Golden Age Home<sup>54</sup> without dealing with the nature of this intelligence, or whether the JCF was justified to act upon it. Considering the clear inaccuracy of that intelligence and the lethal consequences of the operation, this was clearly a significant omission. As the Commission was looking into serious allegations against the Security Forces it was important to challenge any assertions that were apparently exculpatory. Unchallenged hearsay evidence such as unquoted ‘sources’ is a form of evidence that is highly unreliable.

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<sup>52</sup> Paras. 10.12, 10.13 & 10.18

<sup>53</sup> ‘Notes on the View’ in appendices to the report.

<sup>54</sup> Para. 6.15

### **Consideration of legal standards in the report**

The report failed to satisfy the specific requirements that international law demands of a public inquiry into state killings. In particular, the report does not adequately address the planning of the operation, the legal basis for the use of deadly force and the conduct, deployment and operation of the security forces. It also fails to consider issues such as expert medical, scientific and ballistic evidence with such sufficiency as to satisfy international standards.

### **Use of lethal force**

The consideration the use of lethal force, the legal basis for it, and the responsibility of the police to ensure that their officers understand the rules, are dealt with in an extremely cursory fashion. This is despite the fact that the terms of reference appear to acknowledge the possibility of civil or criminal proceedings arising out of the findings of the Inquiry.<sup>55</sup>

The use of lethal force is dealt with in the report of the Commission in Chapter 11. The report outlines the basis for the use of lethal force in the Constitution, which is contained within Section 14(2). This allows for the deprivation of life where the victim dies as the result of the use of force which is reasonably justifiable in the circumstances of the case, for the defence of self or another, or for the purpose of suppressing insurrection or preventing crime. JCF and JDF policies on the use of firearms are not described.

The report discusses the use of force in paragraph 6.10, which states, “it is trite that the Security Forces, in the performance of their duties, should use only so much force as is necessary to effect their purpose”. The report further acknowledges JCF Order 2248, which allows for the use of deadly force as a last resort in order to protect from what is reasonably believed to be ‘imminent death’ or serious bodily harm, and concludes “given the uncontradicted evidence respecting the events of 7-10 July it appears that the Security Forces were not unmindful of the direction and spirit of the regulation”.<sup>56</sup>

The failure of the Commission to ensure there was a procedure that could challenge evidence or that other witnesses would be heard does not justify the acceptance of evidence as ‘uncontradicted’. To suggest that all that is required for state agents when using lethal force is to be ‘mindful’ of the ‘spirit of the regulation’ is a travesty of the respect for human life required by international law.

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<sup>55</sup> “To determine which of its sittings are held in public or private, having special regard to issues of national security, concerns relating to the fear of reprisals and the possibility of civil and criminal proceedings resulting from the facts and circumstances giving rise to the Inquiry.”

<sup>56</sup> Para. 14.35.

The report also seeks to justify the killings in terms of the 'suppression of insurrection' but without any consideration of whether the use of force was proportionate or justifiable as required by the Constitution. There is no consideration of any international standards which are applicable to the JCF and the JDF, despite the fact that these are explicitly incorporated into JCF Force Orders.

### **Responsibility for civilian deaths**

The report fails to draw any conclusions as to whether there is any state responsibility for the deaths of civilians, and the only conclusion that is made is not justified by the evidence. The issue is dealt with in a single paragraph of the report:

*"11.13 As regards innocent bystanders who lost their lives in the 'shoot out' between gunmen and members of the Security Forces, we make two observations: first, there is no proof that these persons died as a result of the action of any members of the Security Forces; and, second, assuming such proof had been made, their deaths were probably justifiable under section 14(2)(c) of the Constitution".<sup>57</sup>*

The Commission of Inquiry was set up partly because there was a *prima facie* case that state agents had been responsible for the killings of civilians. The failure of the Commission of Inquiry to hear any real evidence from witnesses other than the security forces or any ballistics evidence meant that there was no possibility of obtaining 'proof' of who was responsible for the killings. The assumption made that if there had been proof, the killings would 'probably' have been justified is without any factual support, or any analysis of the legal tests required, in domestic or international law. The conclusion that the killings were 'probably justifiable' is openly contemptuous of the legal protection required for the right to life.

### **Preparation and planning of the operation**

The conduct of the security forces is dealt with in Chapter 6 of the report. The report draws certain conclusions on the issue of the preparation and planning undertaken. It deals with the legal basis for detention in Jamaican law and also for the cordon operations which were the pre-cursor to the events that occurred.

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<sup>57</sup> Section 14(2)(c) states "Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case (c) for the purpose of suppressing a riot, insurrection or mutiny."

In Chapter 14 of the report the Commissioner deals with the issue of the deployment and the operation of the JCF. The report accepts that the contingent of police used for the intended operation was 'barely adequate'<sup>58</sup> and that the success of the search for weapons was 'rather limited'<sup>59</sup>.

The Report accepts the evidence that Commanding Officers had 'instructed their ranks to fire at identified targets only.'<sup>60</sup> However, following the killings in West Kingston there were allegations that the JCF had fired weapons into crowded areas without locating specific targets.

Video footage was seen which appeared to show Senior Superintendent Adams firing an M-16 rifle out of a window of the command post in Coronation Market without looking at what he was firing at. In giving evidence before the Commission, Adams suggested that the need to identify targets did not necessarily include having to aim precisely at them, but also included the situation where 'you put your gun in a general direction on the target'.<sup>61</sup> Cross-examination on this point by counsel for the Public Defender, Dennis Daly QC, was cut short by the Commission on the basis of relevance. Similarly, when junior counsel for the Public Defender, Earl Witter, was cross-examining the CVM TV camera man who shot the film, Milton Walker, he was also cut short by the Commission, being told to 'make this your last question' when he asked the witness if it appeared to be 'random shooting'.

The Report fails to discuss the obvious importance of such allegations, or to give any reasoned decisions as to whether such behaviour is an acceptable way to carry out such an operation. There is no consideration of necessity, restraint and proportionality, as required by international standards, or any attempts to limit or control the use of lethal force. The final conclusion that the security forces acted responsibly, 'exercising caution and restraint in order to contain the number of casualties and fatalities that might have occurred over the period' is a difficult one to sustain given the lack of independent and objective evidence presented before the Commission.

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<sup>58</sup> Para. 14.6

<sup>59</sup> Para. 14.31

<sup>60</sup> Para. 14.31

<sup>61</sup> Para. 14.32

**Testimony of Milton Walker, head of CVM Television News, upon cross-examination by Earl Witter, counsel for the Office of the Public Defender.<sup>62</sup>**

**Mr. Witter:** Did you on that day, see SSP Adams in discharging his weapon, appear to you to be firing aimlessly?

**Mr. Walker:** There were times when he fired without lining up a target.

**Mr. Witter:** Would you describe it as random firing?

Justice Julius Isaac, Chairman of the Commission, advises Mr. Walker that he did not have to answer that question as he had already explained what he saw.

**Mr Witter:** [After stating that he had later asked SSP Adams in the Command Post about his method of firing] He [Adams] explained: If you are under fire and you want to repel that attack, one of the techniques used would be to, and especially if it is from a group and you would be in a difficult position to line up one specific target without being shot at, you would just aim in the general direction where that group is and release your trigger.

**Mr. Witter:** How did that explanation strike you?

**Mr. Walker:** How did it strike me?

**Mr. Isaac:** Does it matter?

**Mr. Witter:** Regarding times when you saw Mr. Adams firing apparently not at an identifiable target, having regard to all that, would you today on oath describe the kind of firing you saw Mr. Adams direct when he was not lining up a target, as random firing?

**Mr. Isaac:** He has answered the question already so let's leave it that. I direct him not to answer it. ...

**Mr. Witter:** Mr. Chairman, I cross examine by your leave and grace, whenever my time is up and you rule that it is up, I will abide by your ruling.

**Mr. Isaac:** Well, don't put me to the test, please.

Mr. Walker told Mr. Witter that while at the Command Post, he heard the "thunderous" boom of the police's 50 calibre Barrett M82 several times.

**Mr. Isaac:** Make this your last question, Mr. Witter.

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<sup>62</sup> Tivoli 'under siege', 2 November 2001, Jamaica Gleaner.

## A pattern of impunity

Unfortunately, the West Kingston affair mirrors a pattern of repeated failure by the authorities to adequately investigate other incidents involving allegations of large scale loss of life attributable to the security forces, or other violations of citizens' rights.

One of the main units involved in West Kingston was the Crime Management Unit, headed by Senior Superintendent Reneto Adams. As recently as May 2003, consistent, credible evidence continued to be documented by Amnesty International implicating the unit, and its head, in repeated instances of extrajudicial killings.<sup>63</sup> The most notable example of such an allegation concerned the killing of seven youths in Braeton, Jamaica in March 2001.<sup>64</sup> On 7 May 2003 the CMU killed four people in Crawle, Clarendon in disputed circumstances. Local residents vehemently opposed the police version of events, stating that they witnessed murders by the police. Shortly afterwards, in June 2003, the Commissioner of Police ordered the disbandment of the CMU and transferred its head to desk duties in another unit.<sup>65</sup> The Commissioner also invited Sir John Stevens, Commissioner of the British Metropolitan Police, to Jamaica to lead a team assisting the Jamaica Constabulary Force with investigations into the Crawle shooting. The move followed national and international concern around the actions of the Crime Management Unit (CMU).

Despite these and other recent encouraging developments, such as the reform of guidelines regarding the practice of autopsy observation in May 2003, the Jamaican authorities have thus far shown themselves to be unable to instigate meaningful and effective legal and investigative processes to investigate allegations of violations of the right to life. In some cases, such as the previous killing of four people in Tivoli Gardens in May 1997, the authorities have failed to instigate any investigation at all.<sup>66</sup> In other cases, legal action has been manifestly inadequate. Particular concerns have revolved around the inquest system.

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<sup>63</sup> In May 2003, Amnesty International sent a pathologist to observe autopsies into these killings. See, *JAMAICA: Four more killings bear hallmarks of police extrajudicial executions*, AMR 38/012/2003, 9 May 2003 and *JAMAICA: Inhabitants of Crawle, Clarendon: Threats/Harassment*, 15 May 2003, Urgent Action 137/03 both available as above. See also, *JAMAICA: Killings and Violence by Police – How many more victims?* AMR 38/001/2001.

<sup>64</sup> See, *JAMAICA: The Killing of the Braeton Seven – A Justice System on Trial*, AMR 38/005/2003, available at [www.amnesty.org](http://www.amnesty.org).

<sup>65</sup> See Jamaica Observer, 'Adams' new job description', 'Adams feels betrayed', 3 June 2003, Jamaica Gleaner, 'Adams transferred - CMU to be replaced by special response team', June 2 2003, 'Desk job for Adams', 3 June 2003.

<sup>66</sup> Amnesty International has repeatedly called for an independent, impartial investigation into the disturbances that occurred in Tivoli Gardens on 6 and 7 May 1997. See *JAMAICA: A Summary of Human Rights Concerns – A Briefing for the Human Rights Committee*, AMR 38/007/1997).

Inquests in Jamaica may be held in the cases of violent, unnatural or sudden deaths, or where the cause of death is unknown, to inquire into cause of death. They may determine a finding of criminal liability. In cases where inquests investigate police fatal shootings, proceedings appear so deeply flawed that they seem to be mere formalities, rather than effective searches for the truth. In March 2003, Amnesty International called publicly for the Braeton inquest findings to be quashed on this basis. Specific concerns included the failure to protect family members and witnesses from violence and intimidation; inadequate investigative date (including forensics and ballistics data) and lack of any independent mechanism to collect evidence; failure to ensure adequate legal representation for the families of the deceased; prejudicial and arbitrary rules on evidence; failure to compel police witnesses to testify; excessive delay and, most serious of all, indications of bias on the part of the sitting coroner. Eight months after the conclusion of that inquest, the Office of the Director of Public Prosecutions has yet to make a ruling on liability.

Two other commissions of inquiry have been established in recent years pursuant to the Commissions of Inquiry Act. Amnesty International has previously expressed concerns about the Montego Bay Street People Inquiry (set up to investigate allegations of the forced removal and ill-treatment of homeless persons in Montego Bay in July 1999) and the St. Catherine's Prison Beatings Inquiry (set up to investigate disturbances in the prison in May 2000 which resulted in reports of the serious beating of up to 300 prisoners). In the former case, concerns included the failure of the commission of inquiry to identify the officials responsible for ordering the removal or to ensure that action was taken against the six police officers identified as being involved. Similarly, the Commission of Inquiry 'to inquire into and report on recent incidents at the St. Catherine Adult Correctional Centre on May 21 through to May 25, 2000' ('the St. Catherine Prison Beatings Inquiry') found on the facts that prisoners' injuries were disproportionate to the threat posed and that there was evidence that prisoners had been beaten and guards had discharged firearms into cells. Despite this, none of the guards involved were identified and no action was taken pursuant to the inquiry. There were also consistent reports that prisoners testifying at the Commission were singled out for retaliatory beatings in the prison.

## **Conclusion and recommendations**

Without managing even to identify the dead by name, much less to adequately investigate the circumstances surrounding their deaths, the West Kingston Commission of Inquiry was a travesty of justice. Fatally flawed from the outset, legal, factual and evidential inadequacies culminated to produce a Commission that was institutionally biased in favour of the state.

Many people whom the organisation has interviewed in Jamaica have expressed an attitude of weary resignation that to uncover the truth about July 7-10 2001 will be impossible. There is a perception that the outcome of this inquiry, like that of so many similar previous inquiries into allegations of violations by agents of the state, was predetermined and

undertaken to pacify campaigners, rather than to search for the truth. Amnesty International believes that the people of Jamaica will not be able to trust in the authorities' commitment to the rule of law and that impunity for state killings will persist, with the conclusion that it is 'nobody's fault', until there is a proper Inquiry into what happened in West Kingston in July 2001.

The Commission's numerous deficiencies – including the failure to appoint an independent investigator, to test evidence fully and cross-examine witnesses, to represent victims and their families, to protect and hear evidence from witnesses and to ensure balance in terms of representation – meant that the hearings and subsequent Report completely failed to address violations of the right to life. The Inquiry not only failed to fulfil its own terms of reference but also its obligations under international law to fully investigate the deaths of at least 24 people, killed on a balance of probabilities by the agents of the state.

The report of the Commission fails to deal properly with responsibility for the killings, the planning of the operation and the fair hearing concepts required of such an inquiry under human rights law. It also fails to deal with the international standards applicable where government forces use lethal force in the maintenance of law and order.

Amnesty International believes that nothing short of a full, public, impartial and independent judicial inquiry into all the circumstances surrounding the deaths of an estimated 27 people between 7 and 10 July 2001 will honour Jamaica's obligations under international law. Such an inquiry must have the power to make recommendations as to prosecutions resulting from the investigation.

For many years Amnesty International has expressed concern about the failure of the Jamaican authorities to fully, independently and comprehensively investigate disputed killings by members of the security forces in Jamaica.

Amnesty International believes that such an inquiry is the only kind of mechanism that will be able to afford the in-depth scrutiny necessary to provide the minimum possibility of uncovering the truth behind what happened in West Kingston. Only then will there be a chance of restoring public confidence in the authorities to respect the rule of law. The inquiry must consider all the evidence, including evidence of other killings by the Jamaica Constabulary Force and the Jamaica Defence Force resulting from the same policies and practices that led to the death of so many in West Kingston.

In view of the lack of effectiveness of the West Kingston Commission of Inquiry, Amnesty International urges the Jamaican authorities to seek assistance from the relevant human rights mechanisms of the UN and the OAS to ensure that its investigative efforts meet international standards.

If the voices of the people – other than the security forces – involved in West Kingston are not heard, there can be no justice, and no proper protection for the rights of

those who were killed and will be killed in the future through similar policing operations. There can be no justice for the victims and their families until their voices are heard.

The inquiry must conform to international human rights law and standards regarding the investigation of potentially unlawful killings. In particular, the following should be assured:

**Terms of reference**

- Terms of reference should be neutrally framed, stating precisely the events and issues to be investigated, and should not be overly broad or narrow.

**Power of the Commission**

- The Commission should have the power to obtain all information necessary to the inquiry, including:
  - The authority to compel testimony under legal sanction
  - The authority to order the production of documents
  - The authority to protect witnesses, families of the victim and other sources
  - The authority to issue a public report
  - The authority to conduct on-site visits.

**Commission Members**

- Commission members should be chosen for their recognised independence, impartiality and competence as individuals. There should be more than one commissioner.

**Choosing expert advisers**

- Technical expertise in areas such as pathology, forensic science and ballistics should be available to the Commission. Any forensic investigations must be carried out in line with international standards such as the *UN Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions*.

**Choosing a commission counsel**

- The Commission of inquiry should have impartial, expert counsel, insulated from political influence.

**Choosing investigators**

- The commission should have its own investigators to develop evidence.

**Protection of witnesses**

- The government should protect complainants, witnesses, those conducting the investigation, and their families from violence or threats or violence or any other form of intimidation.

- If the Commission concludes that there is a reasonable fear of persecution, harassment or harm to any witness or prospective witness, the commission may:
  - Use only such evidence as will not present a risk of identifying the witness

#### **Rights of parties**

- Families of the deceased and their legal representatives must be entitled to present evidence and be informed of all information relevant to the investigation.
- Other interested parties should have the opportunity of being heard.
- All witnesses should be permitted legal counsel if they are likely to be adversely affected by the inquiry for example when their testimony could expose them to criminal charges or civil liability).
- There should be an opportunity for effective questioning of witnesses by the commission.

#### **Receipt of evidence**

- Powers to receive evidence should include the power to compel evidence (as described above), the use of witness statements as a first step in gathering evidence and the review of relevant evidence from other proceedings. Witness statements can be an important source of evidence if the author of the statement is too afraid to testify.
- Potential witnesses who should be identified should include: suspects, relatives and friends of the victim/s, people who knew the victims, individuals residing in the area of the crime; people who knew or had knowledge of the suspects; people who may have observed either the crime, the scene, the victim or the suspects in the week prior to the killing; people having knowledge of possible motives.

#### **Evaluation of evidence**

- All evidence and information should be assessed to determine relevance, veracity, reliability and probity.
- Testimony not tested by cross examination should be treated with caution.
- Evaluation of oral testimony should be based on the overall credibility of the witness.
- Corroboration of evidence from several sources should increase probative value.
- Reliability of hearsay evidence should be considered carefully before it can be accepted as fact. Hearsay evidence from several sources should increase its probative value.

#### **Response of Government**

- The government should either reply publicly to the report or indicate the steps it intends to take in response.
- The findings should be passed to the relevant prosecutorial or other authorities for a determination as to potential criminal or civil liability.



## **APPENDICES**

### **1. Terms of Reference of the Inquiry**

The significant parts of the terms of reference of the inquiry with regard to international human rights standards are as follows:

1. To enquire into and report on all factors and aspects concerning the upsurge of criminal violence since May 2001 in [the West Kingston area], without prejudice to the generality of the foregoing:
  - a. to examine the causes and circumstances relating to the criminal activities including the presence and/or use of illegal weapons, ammunition and narcotic drugs within the affected communities;
  - b. to enquire into and report on whether and to what extent the upsurge of violence and criminality is linked to external connections and illegal enterprises dealing in drugs, illicit weapons, money laundering, extortion of money and other elements of organised crime;
  - c. to enquire into the conduct of the security forces in carrying out law enforcement functions in the affected communities.
2. To enquire into and report on the reason(s) and motive(s) for the presence of the security forces in the vicinity of Denham Town and Tivoli Gardens and their environs during July 7-10, 2001, and to determine whether the security forces came under gunfire or were otherwise impeded in the execution of their duties whilst in the aforesaid vicinity and/or environs.

And further

- a. to enquire into and report on the causes and circumstances which were responsible for creating the ensuing upsurge of violence and the ravages arising in the aftermath of such violence;

- b. to enquire into and report on the causes and circumstances in which civilians and security personnel lost their lives or were injured; the movement or non-removal of deceased bodies during the period of conflict;
  - c. to ascertain and report on whether the rights of any person(s) were violated in the affected communities;
  - d. to enquire into and report on the causes and circumstances relating to any attack launched against the security forces, including police stations, vehicles and equipment;
  - e. to enquire as to what damage, if any, ensued to the property and assets of residents, businesses and vendors and to report on the causes and circumstances which so occasioned it;
  - f. to enquire into and report on the deployment, operation and conduct of the security forces within the precincts during the period in question;
  - g. to enquire into and report on the causes and circumstances which were responsible for the loss of lives, the establishment of roadblocks and other forms of disruption in several communities throughout Jamaica in the aftermath;
  - h. to identify, wherever possible, the persons or organisations which may have participated in or contributed to the actions at a. to g. above.
3. To make recommendations that will assist the security forces in effectively and professionally discharging their responsibilities for the maintenance of law and order in the aforesaid and similar communities without endangering their own safety or that of innocent persons.
  4. To submit recommendations as to the measures which would contribute to permanent and effective solutions for a more peaceful social order in the affected communities; to the building of community esteem; the enhancement of relationships between the security forces, residents and businesses within these

areas; the control and reduction of criminality; the retrieving of illegal guns, ammunition, other offensive weapons and illicit substances; and the proper safeguard and accountability for whatever may be seized.

5. To determine which of its sittings are held in public or private, having special regard to issues of national security, concerns relating to the fear of reprisals and the possibility of civil and criminal proceedings resulting from the facts and circumstance giving rise to the Inquiry. In light of the foregoing, the commission should, in relation to the conduct of the Inquiry, decide the extent to which it is desirable and practicable for any recording or publication of its proceedings to accord with procedure for hearing before the Supreme Court.
6. To submit a final report so soon as possible but be at liberty to submit any interim report(s) as it may find necessary.

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## AMNESTY INTERNATIONAL PRESS RELEASE

12 July 2001

AI Index AMR 38/017/2001 - News Service Nr. 120

### **Jamaica: the culture of violence must stop**

In the wake of the recent outbursts of violence in Jamaica, Amnesty International today called on all Jamaicans to oppose the continuing tragedy of inter-community violence and human rights abuses by the security forces.

"For Jamaica to turn over a new leaf and move towards a more peaceful society, everyone -- from the most influential politician downwards -- must make a contribution to stopping the violence," the organization added.

Over the past few days, an estimated 21 people have been killed by members of the security forces, four members of which were also killed. Amnesty International has received numerous reports of police and army personnel firing indiscriminately or targeting unarmed civilians in the areas affected by the violence.

"These killings must be adequately investigated and political leaders and their followers must fully cooperate with all such investigations," Amnesty International said.

"Leaders of the Jamaica Labour Party (JLP) and the People's National Party (PNP) must make clear to their supporters and every other citizen that violence against their political opponents or the security forces is not acceptable."

"The culture of blame currently prevailing in Jamaica will not bring an end to the violence and human rights abuses we witness today, which are taking place in a highly politicised atmosphere. We believe that dialogue between the political parties is necessary to see calm restored and human rights protected," Amnesty International said.

The organization fully supports the efforts of the Private Sector Organization of Jamaica and others to bring the two main political parties together for talks on stopping the violence.

Amnesty International acknowledges the difficulties and dangers faced by those responsible for the policing of areas controlled by armed individuals. However, the organization believes that -- even under these lethal conditions -- the police and army must operate under the codes of conduct governing law enforcement agencies, which stipulate that officers must deploy only the minimum amount of force necessary to protect themselves and those around them.

Moreover, the deployment of army troops for the maintenance of public order must occur in a manner consistent with human rights protection.

"Human rights abuses committed by the security forces can only cause the situation to deteriorate and will undermine confidence in their ability to maintain peace and order and to protect the population," Amnesty International said.

Amnesty International fears that the widespread violence recently witnessed in Kingston could become a regular occurrence in the lead up to elections that are to take place before the end of 2002.

"If such widespread violence, death and destruction are brought into the forthcoming elections, no matter which party wins, all of Jamaica will lose."

### **Background**

Jamaica has a history of political violence, dating back to the 1970s and the formation of armed gangs with political affiliations. This year, violence with political undertones has been reported since the drive-by shooting in April 2001 of William "Willie Haggart" Moore, of Arnett Gardens (a PNP area), triggered violence in that and surrounding areas, leaving an estimated 41 people dead in the past two months.

On Saturday 7 July 2001 members of the Crime Management Unit raided Tivoli Gardens in West Kingston, a JLP garrison community, in an operation described as a raid for illegal arms stocks. In May 1997, Tivoli Gardens was the scene of similar disturbances. On that occasion, army and police officers were alleged to have discharged thousands of ammunition rounds indiscriminately over two days, following the shooting of a resident of the area by security forces. The disturbances occurred eight months before a general election, at a time of political tension.

The Crime Management Unit was established by the Prime Minister in September 2000. Amnesty International has received credible reports that the unit has been responsible for a number of alleged extra-judicial executions and acts of torture since its formation.

On 9 July 2001 the Prime Minister P.J. Patterson vested the army with police powers. Section 9 of the Defence Act states that the Jamaica Defence Force may be deployed in Jamaica "for the purpose of maintaining and securing public safety and public order". During the existence of the Suppression of Crimes Act -- emergency legislation which granted police and soldiers broad powers of arrest and detention -- there were numerous reports of arbitrary arrests and detentions, torture and ill-treatment. These were acknowledged by the current Minister of National Security and Justice at the time when the act was repealed.

\\ENDS public document

## **AMNESTY INTERNATIONAL PRESS RELEASE**

5 October 2001

AI Index AMR 38/023/2001

### **Jamaica: Amnesty International to send observer to Commission of Inquiry into the July violence in West Kingston**

Amnesty International today announced that it will send an observer to the Commission of Inquiry into the violence that left at least 27 people -- including two members of the security forces -- dead in West Kingston in July this year.

"The Commission of Inquiry is of vital importance if Jamaica is to stop the cycle of political violence that has left so many of its citizens dead in recent years. Amnesty International believes that international scrutiny of the Commission is appropriate given the allegations of human rights abuses committed by the security forces in their attempt to restore order in the area," the organization said.

During the tragic events of July 2001, Amnesty International received reports of the torture and arbitrary detention of young men in the West Kingston area. Reports included allegations of young men being forced to lie on the ground for prolonged periods in extreme heat and of members of the security forces firing automatic weapons indiscriminately in heavily populated areas.

British barrister Rupert Skilbeck will be representing Amnesty International at the Commission for one week commencing 8 October 2001. This will be the first of a series of observations of the proceedings.

Rupert Skilbeck is a member of Bar of England and Wales Human Rights Committee, and has previously observed trials on behalf of Amnesty International in Zambia. He has also worked for the US non-governmental organization the Southern Center for Human Rights and for the European Court of Human Rights. He has published several papers on human rights law and is a practising criminal lawyer.

#### **Background**

Jamaica has a history of political violence, dating back to the 1970s and the formation of armed gangs with political affiliations. This year, violence with political undertones has been reported since the drive-by shooting in April 2001 of William "Willie Haggart" Moore, of Arnett Gardens (an area affiliated with the ruling People's National Party), which triggered violence in that and surrounding areas, leaving an estimated 41 people dead in the past two months.

On Saturday 7 July 2001 members of the Crime Management Unit raided Tivoli Gardens in West Kingston, an area affiliated with the official opposition party, the Jamaica Labour Party, in an operation described as a raid for illegal arms stocks. In May 1997, Tivoli Gardens had already been the scene of similar disturbances. On that occasion, army and police officers were alleged to have discharged thousands of ammunition rounds indiscriminately over two days, following the shooting of a resident of the area by security forces. The disturbances occurred eight months before a general election, at a time of political tension.

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public document

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PUBLIC AI Index: AMR 38/018/2001

UA 177/01 19 July 2001

**Arbitrary arrests / torture and ill-treatment / legal concern**

JAMAICA Neville Lynch (aged 16), Lenworth Henry, Orane Bailey, Delroy Kennedy, Prince Breckett, Dean Damian Stone, Wayne Punancy, Roland Walker, Trevor Abel, Kirk Headley, Patrick Williams, David Spence, Rohan Lynch, Dervin Nappier, Anthony Archer, Chris Boodie, Dwayne Walker, Alphonso Kennedy, Davian Williams.

The above named men, aged between 16 and 22, have been detained without charge since they were arrested from their homes in Board Villa, Denham Town, Kingston, between 7 and 8 July by members of the Crime Management Unit (CMU). Some of the men have reportedly been denied access to lawyers and/or families. They have reportedly all been ill-treated. Amnesty International is concerned for their safety.

Reports have alleged that at the time of the arrests, the men were beaten, kicked, slapped in the face and stomped on. Delroy and Alphonso Kennedy were reportedly forced to lie shirtless on a concrete pavement in the sun for three hours. The two allegedly suffered burns to their bodies. All the men were illegally finger-printed and photographed at Harmon Barracks. They are understood to have been arrested along with an estimated 200 others, who have reportedly since been released.

Police reportedly brought the detainees, who live in an area dominated by the opposition Jamaica Labour Party (JLP), to Hannah Town (Kingston), an area dominated by the ruling People's National Party (PNP), where they were beaten by rivals.

Neville Lynch, Lenworth Henry, Orane Bailey, Delroy Kennedy, Prince Breckett, Sean Damian Stone, Wayne Punancy, Roland Walker, Trevor Abel, Kirk Headley, Patrick Williams, David Spence, Rohan Lynch and Dervin Nappier are currently detained at Portmore Police Station. Anthony Archer, Chris Boodie, Dwayne Walker, Alphonso Kennedy and Davian Williams are detained at the Gun Court Remand Facility.

Neville Lynch, a 16-year-old juvenile, was reportedly beaten in custody. The police were apparently trying to force him to say that he is 18 years old. Police have allegedly also refused to allow the families of some of the detainees, who were undressed when arrested, to bring clothing and shoes.

**BACKGROUND INFORMATION**

Amnesty International has long-standing concerns regarding patterns of human rights violations committed by police and security forces in Jamaica, including extra-judicial executions, excessive use of force, arbitrary arrests and

torture and ill-treatment. Detainees, including children, are often held in inhumane conditions and subjected to torture or ill-treatment in custody.

The arrests followed a raid by members of the CMU on 7 July in Tivoli Gardens, a stronghold of the opposition JLP. The CMU alleged the operation was an attempt to recover arms. At least 27 people - including four police officers - were killed during the resulting disturbances, which lasted several days. Reports indicate that police and army personnel fired indiscriminately into crowds and houses, including from helicopters above the area, and targeted unarmed civilians. On 9 July the Prime Minister ordered the army onto the streets, who imposed curfews in the affected areas.

The CMU, which carried out the arrests, was established by the Prime Minister in September 2000. Amnesty International has received credible reports that the unit has been responsible for a number of alleged extra-judicial executions and acts of torture since its formation.

The UN Human Rights Committee has ruled that a delay of one week from time of arrest before the detainee was brought before a judge was incompatible with article 9(3) of the International Covenant on Civil and Political Rights, to which Jamaica is a state party. The Inter-American Commission on Human Rights has stated that the detention of individuals in prison for over a week without being brought before a judicial authority is an excessively prolonged period.

### 3. What is Amnesty International?

Amnesty International (AI) is a worldwide movement of people campaigning for internationally recognized human rights. Amnesty International seeks the implementation of the Universal Declaration of Human Rights (UDHR) and other international human rights instruments.<sup>67</sup> The UDHR proclaims in clear and simple terms the rights which belong equally to everyone.<sup>68</sup> Amnesty International seeks to make these rights relevant by holding governments to account.

To do this Amnesty International

- Campaigns for perpetrators of human rights abuses to be brought to justice;
- Opposes without reservation the death penalty, torture and other cruel, inhuman or degrading treatment or punishment;
- Calls on governments to refrain from unlawful killings in armed conflict;
- Calls on armed political groups to end abuses such as the detention of prisoners of conscience, hostage-taking, torture and unlawful killings;
- Opposes abuses by non-state actors where the state has failed to fulfil its obligations to provide effective protection;
- Seeks to assist asylum-seekers who are at risk of being returned to a country where they might suffer serious abuses of their human rights;
- Opposes grave abuses of economic, social and cultural rights
- Seeks the release of all prisoners of conscience. (These are people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status — who have not used or advocated violence);
- Works for fair and prompt trials for all political prisoners;
- Campaigns for an end to political killings and "disappearances".

**To join Amnesty International** - contact the section or structure in your country; see [www.amnesty.org](http://www.amnesty.org)

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<sup>67</sup> The Universal Declaration of Human Rights was written, adopted and proclaimed by the United Nations (UN) on 10 December 1948 as a response to the atrocities of the Second World War. Member states pledged "to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms."

<sup>68</sup> See [www.unhcr.ch/udhr/](http://www.unhcr.ch/udhr/)