



PART 3

# **Jamaican Law and YOU**



Caribbean  
Vulnerable  
Communities  
Coalition

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# OBJECTIVE AND INTENDED OUTCOMES

**This part of the Legal Literacy Manual provides a specific case study on relevant aspects of the Jamaican legal system and framework. It seeks to provide a guideline for persons in Jamaica, especially members of vulnerable population. It is also intended to serve as a reference point in relation to frequent legal issues affecting vulnerable citizens.**

## GENERAL OBJECTIVES

To provide a basic refresher on the Jamaican legal and court system in a bid to ensure that you can provide basic useful advice on the way forward in relation to complaints made by your users to your organization. The purpose of these modules is to provide an avenue for internal discussions about possible options within and outside of Jamaica to lobby for redress and changes in policy. This part is also intended to be a reference section in relation to certain material law and issues.

1. to provide a basic refresher on the Jamaican legal and court systems;
2. to equip participants with relevant information to guide persons who have complaints against organization;
3. to provide an opportunity for discussions around possible options for redress and policy changes both locally and internationally.

## SPECIFIC OBJECTIVES

At the end of this module, participants should be able to:

1. Describe the court/legal structure in Jamaica;
2. Discuss the basic principles civilians should know for basic police interaction;
3. Explain how judicial and or civil remedy can be obtained when one's rights are breached;
4. Apply lessons learnt from other organizations to address population-specific problems;
5. Name the different government entities and NGOs where redress can be sought;
6. Suggest various avenues for legal options, including appeals, judicial review and declarations in Jamaica;
7. Outline the steps involved in engaging international institutions when seeking redress or documenting complaints

## MODULE 15

# LAWS AFFECTING SPECIFIC GROUPS IN JAMAICA

### POINTERS FOR KEY POPULATIONS

Citizens interact with the police and each other daily. Some persons, however, especially members of vulnerable populations, face challenges. This module makes a case study out of some of the laws that affect vulnerable Jamaicans.

In this section we will:

- I. Define vulnerable Jamaicans
- II. Discuss challenges vulnerable populations face;
- III. Determine how Jamaican laws compound challenges faced by vulnerable populations
- IV. Identify solutions to challenges faced by vulnerable populations.
  - What challenges do they face?

- How are these challenges compounded by the law?
- How can these be addressed?

Vulnerable Jamaicans include:

- Sex workers
- Drug users
- Marginalized youths
- Men who have sex with men
- Transgenders and transsexuals
- Migrant population
- Omen
- Women who have sex with women
- Persons with disabilities

Some challenges faced by vulnerable populations include:

1. Discrimination by members of the general population
2. Diminished job opportunities
3. Loss of family life/alienation from family
4. Harassment by law enforcers and the Court
5. Greater potential of being arrested, assaulted and abused
6. Unequal access to Justice and the Legal system
7. Barriers to accessing health services.
8. Lack of protection from the Legal and Political systems

## DISCUSSION

**In your groups, discuss the following. Make notes that can be shared with other groups.**

1. Who are vulnerable Jamaicans?
2. What challenges do vulnerable Jamaicans face?
  - a. How can these challenges be addressed?

# LAWS AFFECTING KEY POPULATIONS



## MEN WHO HAVE SEX WITH MEN (“MSM”)

The laws that affect the MSM community include the express provisions such as:

The Offences Against the Person Act (OAPA), which sought to criminalize consensual sexual intimacy between adult men in private.

The OAPA is a law that makes it a crime for any person to engage in or attempt to engage in the act of buggery. Buggery is anal intercourse. Anal intercourse is a form of sexual expression between same-sex couples. This law prohibits this sexual expression.

The OAPA also makes it a criminal offence for a person/s to 'indecently assault' another male person. An assault is any unwanted physical touch.

While the term, 'Indecent Act' is not defined in the OAPA, a police officer can arrest any person who s/he feels is engaged in what s/he believes to be an indecent act. This person will then be dragged before the court to enter a plea of guilty or not guilty. If the person says s/he is not guilty, it will then be up to the court to make a determination as to whether the act complained of would amount to an indecent act.

The arrested individual, in the interim, would have to suffer the public embarrassment of being arrested for committing an indecent act. It is important to note that what would constitute an indecent act in 1894 may not be considered an indecent act in 2018. It, therefore, would be up to the court to interpret the matter and to determine what an indecent act is. Indecent assault is understood to be a sex crime and refers to sexual touching of sexual organs or orifices. The law prohibits this form of contact as well.

**The text of the law is quoted below for your information and record:**

## Jamaica Offences Against the Persons Act

### *Unnatural Offences*

*76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal*

*77. Whosoever shall attempt to commit the said abominable crime, or of any indecent assault upon any male person*

### *Outrages on Decency*

*79. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person*

The law affects MSM by its failure to expressly:

- i. prohibit certain discriminatory behaviour by members of the public.
- ii. include MSM and sexual orientation as protected groups in the Constitution under the Articles that deal with discrimination.

## DISCUSSION

Divide yourselves into two groups:

- A. Group 1 is to pretend that you are politicians representing the Government. Explain to a group of Christian Lawyers why there is a continued need to have the discriminatory laws on the books.
- B. Group 2 is to pretend to be the executive director of JFLAG. Explain to the said group why it would not be in Jamaica's interest to have these discriminatory laws on the book.

# SEX WORKERS

The laws affecting sex workers include:

- I. The Town and Communities Act (TCA), and
- II. The Sexual Offences Act (SOA).

These Acts collectively seek to criminalize the actions of sex workers and to ensure that it is difficult for them to enjoy the freedom of work and to determine how they utilize their own bodies.

The TCA makes it an offence for one to simply stay out late in a public space at night. The mere act of 'chilling' at night could be construed as 'loitering' in a public place. The TCA provides multiple opportunities for citizens to be arrested for simply having a drink.

The exact provisions of the TCA are included in this document to provide some guidance regarding what would trigger an arrest. The term loitering means standing or waiting around without any apparent purpose. The term soliciting means asking for and trying to obtain something from someone. The TCA prevents persons from standing around to seek to sell sexual favours to other citizens. The princely sums for doing committing this crime is One Thousand Dollars (\$1,000.00).

This, therefore, means that the greatest punishment the sex worker would face would be the action of the police officer to arrest and charge him or her for the crime. The TCA empowers a police to arrest a citizen for this crime on the word of another person that they saw them committing the offence.

The text of the law is quoted below for your information and record:

## Towns and Communities Act 1843

*3. Every person who-*

*(r) shall loiter in any public place and solicit any person for the purpose of prostitution, shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars.*

*4. It shall be lawful for any constable to take into custody, without warrant, any person who shall commit any of the offences hereinbefore mentioned within the view of any such constable, the constable can also take the offender into custody if another person alleged that they committed the offence within the view of the person making the charge.*

## Criminal Offence to engage in sex work

The SOA makes it an offence for a man or a woman to engage in the act of prostitution. The SOA does not define the term prostitution. Prostitution is usually defined as the practice of engaging in sexual activity with someone for payment. The person who engages in this activity as an occupation is often termed in law a 'prostitute'.

The SOA contains provisions which (wittingly or unwittingly) ban persons from:

- a. Being a male or female prostitute (Sec. 18 (1) (b))
- b. Knowingly living off the earnings of prostitution (Sec. 23)
- c. Persistently soliciting for an immoral purpose (sec 23 (1) (b))

The text of the law is quoted below for your information:

## Sexual Offences Act, 2011

18 - (1) A person commits an offence who procures or attempts to procure any other person-  
(b) to be, either within or outside Jamaica, a male or female prostitute;  
(c) to leave Jamaica, with the intent that the other person shall become a male or female prostitute, or an inmate of, or frequent a house of prostitution; or (4 to leave the other person's usual place of abode in Jamaica (such place not being a house of prostitution), with intent that the other person may, for the purposes of prostitution, become an inmate of or frequent a house of prostitution within or outside of Jamaica.

(2) 'Any member of the Jamaica Constabulary Force above the rank of corporal may take into custody without a warrant any person whom he has good cause to suspect of having committed, or of attempting to commit, any offence against subsection (1).

23. - ( 1 ) Every person who:

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b) in any place, whether public or private, persistently solicits or importunes for immoral purposes, commits an offence and is liable-
  - (i) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years; or
  - (ii) on conviction in a Circuit Court, to a fine or to imprisonment for a term not exceeding ten years.

(2) If it is made to appear to a Resident Magistrate or Judge, as the case may require, by information on oath that there is reason to suspect that any house or any part of a house is being used for the purposes of prostitution and that any person residing in or frequenting the house is living wholly or in part on the earnings of prostitution, the Resident Magistrate or Judge may issue a warrant authorizing any constable to enter and search the house and to arrest that person.

(3) Where a person is proved to live with, or to be habitually in the company of, a prostitute, or is proved to have exercised control, direction or influence over the movements, of a prostitute in such manner as to show that the person is aiding, abetting or compelling prostitution, whether with any particular person or generally, the person shall, unless the court is satisfied to the contrary, be deemed to be knowingly living on the earnings of prostitution. (4) Subject to subsection (5), the wife or husband of a person charged with an offence under this section may be called as a witness either for the prosecution or the defence and without the consent of the person charged.

(5) Subsection (4) shall not, except to the extent specified therein, be construed as affecting any principle that the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

## Sex Workers are Prohibited Immigrants

The Immigration Restriction (Commonwealth Citizens) Act, 1945 ('IRCA') also clearly states that sex workers are prohibited immigrants. This means that they can be prevented from visiting Jamaica.

If a sex worker tries to come to Jamaica and declares his/her occupation as a prostitute, s/he may be ordered to leave the island or may be prevented from even disembarking the plane or vessel in which s/he arrived. S/He may also be arrested and brought before a court for a Judge to order him/her deported to his/her home country.

This law is still on our law books and can be enforced by immigration officers. It provides opportunity for immigration officers to 'probe' persons who they believe are sex workers. If the immigration officer believes that someone is a sex worker, this person may be arrested and placed in a cell like a common criminal. The perceived sex worker could also be prevented from entering or leaving the island.

The text of the law is quoted below for your information and record:

### The Immigration Restriction (Commonwealth Citizens) Act 1945

*4.-(1) The following Commonwealth citizens ... are prohibited immigrants-*

- (e) any prostitute or any person who may be living on or receiving or may have lived on or received the proceeds of prostitution;*
- (f) the children under the age of sixteen years being dependants of a prohibited immigrant;*

*19. An immigration officer who decides that a Commonwealth citizen is a prohibited immigrant may in his discretion-*

- (a) order him to leave the Island and proceed immediately in the same vessel in which he arrived or in a vessel of the same owners or agents;*
- (b) order him to leave the Island within sixty days of his entering the Island and, if the immigration officer thinks fit, by a specified vessel; or*
- (c) cause him to be arrested and brought before a Resident Magistrate with a view to an order being made for his removal.*

The aforementioned sections are self-explanatory.

# CASE STUDY

## Attorney General of Canada v. Terri Jean Bedford, Amy Lebovitch and Valerie Scott [2013] 3 SCR 1101

This is a ruling of the Supreme Court of Canada (Canada's highest court) in relation to sex work. The Applicants – Bedford, Lebovitch and Scott – argued that Canada's prostitution law was unconstitutional. The law includes a number of provisions, such as outlawing public communication for the purposes of prostitution, operating a bawdy (brothel) house or living off the avails (earnings) of prostitution. Bedford argued that the laws deprive sex workers of their right to security by forcing them to work secretly.

The Applicants won at all stages of the case. The government appealed to the Supreme Court, which ruled on the 20 December 2013 that three provisions of Canada's Criminal Code violate the s. 7 right to security of the person protected by the Charter of Rights and Freedoms. These provisions are s. 210 (keeping or being found in a bawdy house), s. 212(1)(j) (living on the avails of prostitution), and s. 213(1)(c) (communicating in public for the purpose of prostitution) violate the s. 7 right to security of the person protected by the Charter of Rights and Freedoms. All three laws have been struck down.

In a decision written by the Chief Justice, the court said:

"The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risk." (para 60)

s. 210 (keeping or being found in a common bawdy house)

The SCC held that the bawdy house law violates sex workers' constitutionally protected right to security of the person and is struck down. The Court found that this law prevents sex workers from working a fixed location that is safer than working on the street or meeting clients at different locations. (Para. 64)

Specifically, the Court stated, "The harms identified by the courts below are grossly disproportionate to the deterrence of community disruption that is the object of the law. Parliament has the power to regulate against nuisances, but not at the cost of the health safety and lives of prostitutes. A law that prevents street-prostitutes from resorting to a safe haven, such as Grandma's House, while a suspected serial killer prowls the streets is a law that has lost sight of its purpose." (Para. 136)

s. 212(1)(j) (living on the avails of prostitution)

The SCC held that the living-on-the-avails provision violates sex workers' constitutionally protected right to security of the person and is struck down.

The SCC writes that the law is overbroad in that

"The law punishes everyone who lives on the avails of prostitution without distinguishing between those who exploit prostitutes (such as controlling and abusive pimps) and those who could increase the safety and security of prostitutes (for example, legitimate drivers, managers, or bodyguards". (Para. 142)

The full decision is available at <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/13389/index.do>

## ACTIVITY

1. Do you agree with the above-mentioned decision?
2. What implications would it have for the laws in our country that discriminate against sex workers?

## PEOPLE WHO USE DRUGS

The Dangerous Drugs Act, 1990 makes provisions that prohibit possession of and trafficking in narcotics, as well as the cultivation of certain plants in Sections 3 – 14. With regard to dangerous or otherwise harmful drugs, it provides for the forfeiture of the proceeds of drug trafficking. It further gives birth to the National Drug Abuse Control Council, which works toward the prevention of the misuse of drugs.

7F. A person who is in possession of 2 ounces or less of ganja contravenes this section.

7G. A person who is in possession of 2 ounces or less of ganja shall not be liable to be arrested or detained therefore, but shall be liable to a fixed penalty of Five Hundred Dollars (\$500).

The police is also empowered to refer persons to the National Council on Drug Abuse if the person is under 18 years old or if it appears to the constable that the person is dependent on ganja or any other prohibited substance.

## PERSONS WITH DISABILITIES

The Jamaican Constitution specifically prohibits discrimination against persons. It does not include a specific clause to protect the disabled. Under Section 16 of the Constitution, disability is included as one of the protected classes. A person with a disability will be able to rely on the anti-discriminatory clause in the Disabilities Act, if s/he suffers discrimination.

Two of the objects of the Act are to prevent or prohibit discrimination against a person with a disability and promote respect for differences and acceptance of persons with disabilities as part of human diversity and humanity.

### What is discrimination?

In Section Two of the Disabilities Act, 'discrimination' is defined as any distinction, exclusion or restriction, on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment to exercise, on an equal basis with others, of privileges, legal interests, rights, benefits and treatment, in the political, economic, social, cultural, civil, religious, educational or any other field, and includes all forms of discrimination, including denial of reasonable arrangements, and "discriminate" shall be construed accordingly.

'Persons with disabilities' or where the context requires "person with a disability" includes a person who has a long-term physical, mental, intellectual or sensory impairment that may hinder his full and effective participation in society, on an equal basis with other persons;

3. *The principal objects of this Act are to-*

- a) reinforce and promote recognition and acceptance within Jamaica of the principle that a person with a disability, has the same fundamental rights as any other person in Jamaica;*
- b) promote individual dignity and individual autonomy, including the freedom of choice and independence of a person with a disability;*
- c) ensure full and effective participation and inclusion in the society for persons with disabilities on an equal basis with others;*
- d) prevent or prohibit discrimination against a person with a disability; and*
- e) promote respect for differences and acceptance of persons with disabilities as part of human diversity and humanity.*

***It must be noted, however, that Part IV of the Act seeks to protect citizens.*** The text of the law is quoted below for your information and record:

## Sections 24 and 25 of the Disabilities Act, 2014

*24. Persons with a disability shall be entitled to the enjoyment of privileges, interests, benefits and treatment, whether directly, or through contractual, licensing, or other arrangements.*

The above section seeks to provide equal access to privileges, interests, benefits and treatment.

*25. A person with a disability shall not, by reason of such disability, be subject to any form of discrimination.*

The above section seeks to protect persons from discrimination.

The Act also provide more specific protection on the following grounds:

### I. PART V: Education and Training

- A. Section 26 (1) states that a person with a disability should not be denied education and training by reason of his or her disability.*
- B. Section 26 (2) states that the school has statutory duty to ensure that disabled persons, by reason of their disability, are not placed at a disadvantage.*
- C. Section 27 states that examinations and courses shall be conducted in a manner and with facilities accessible to persons with disabilities.*
- D. Section 28 states that the Minister of Education has a duty to make reasonable arrangements within the education system to facilitate the education of persons with disabilities.*

## PART VI: Employment

- A. *Section 29 states that an employer shall not discriminate against a person with a disability who is otherwise qualified for employment*
  - i. *in terms of employment offered,*
  - ii. *opportunities for promotion, transfer or training or receipt of benefits*
  - iii. *by dismissing him or subjecting him by his virtue of his disability to any other detriment, without reasonable cause*
- B. *Section 29 (2) states that an employer is not discriminating where the different treatment is justified in the circumstances or cannot be avoided in the circumstances.*
- C. *Under Section 30, the employer has a duty to make adjustment in the employment arrangement and premises to ensure that a person with a disability is not disadvantaged because of such arrangement or feature.*
- D. *Section 31 states that where an employee has become disabled, whether by virtue of his employment or otherwise, and that employee is no longer capable of executing tasks required by his contract in so far as there is no disproportionate or undue burden, the employer shall redeploy the employee to a position that is commensurate with the current skills and abilities of the employee, and that does not result in loss in remuneration and benefits to the employee.*

## V. PART VII: Political Office and Public Life

- A. *Under Section 32, a person with a disability shall not by reason of such disability be denied the opportunity to participate in programmes, activities or work that relate to political office – including opportunity to vote, to be elected to political office and to be involved in the activities and administration of political parties. – Section 32*
- B. *Under Section 33, a person with a disability shall not by reason of disability be denied the opportunity to effectively and fully participate in the conduct of public affairs, including participation in civil society, forming and joining organizations of persons with disabilities to represent such persons at local, national, regional and international levels.*
- A. *Under Section 34, without limiting the effect of Section 40 (2) (f) and 41 (4), the protection under this part shall not be construed as applying to any person who has a mental disorder within the meaning of the mental health act.*

## II. Health Care and Facilities – Part VII

- A. *Section 35 (1) states that healthcare providers shall provide healthcare without discrimination on the basis of a disability.*
- B. *Section 35 (3) states that to the extent that resources permit, established international standards shall be observed in respect of the care and protection suitable to the individual needs of a person with disability.*

### III. Part IX: Premises and Housing

- A. *Under Section 36 (1), the owner or agent of an existing private premises who either rented it in the past or intends to rent it in the future must alter the premises, so far as reasonably practicable, to ensure it is accessible to a disabled person if a request is made by a person with disability.*
- B. *Section 36 (2) states that this burden applies as respect (a) entrances, (b) bathrooms, (c) telephones, (d) drinking fountains, or (e) emergency exits.*
- C. *Section 36 (3) states that this requirement shall not apply if the alterations would constitute a disproportionate or undue burden.*
- D. *Under Section 37, all new public and commercial premises (constructed after the Act took effect) should ensure that the premises are built to be readily accessible to and usable by a person with disability.*

### V. Part X: Public Passenger Vehicles

- A. *The minister with responsibilities for public passenger vehicles shall ensure as far as practicable the provisions of PPV that are accessible to and usable by persons with disabilities.*
- B. *A PPV vehicle is ANY motor vehicle or any other conveyance for transport by road, rail, air or water that provides the public with a general or special transportation service on a regular or continuing basis.*

The Jamaica Council for Persons with Disabilities is established pursuant to Section 5 of this Act. It is empowered by Section 16 of the Act to receive complaints from aggrieved person no later than 2 years after the date of such occurrence. Complaints may be made about acts of discriminations carried out against a person of disability. The Council may conduct a formal investigation for any purpose connected with the performance of its functions under the Act.

The Council is obliged to refer legitimate complaints of breach of the Act to the Disabilities Rights Tribunal, established for determination or with the consent of the parties named in the complaint, refer the complaint for alternative dispute resolution.

The Disabilities Right Tribunal is empowered by Section 19 (3) to make such order as it thinks fit, including:

- A. Declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates
- B. Make and order to the effect that the respondent pay compensation in such amount and in such manner as the Tribunal may direct to the complainant
- C. Order the respondent to take within a specified period, such action as appears to the Tribunal to be reasonable and proportionate in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates

The Tribunal may also encourage the parties to settle the matter by negotiation or conciliation.

1. Please state specifically the different laws affecting the following groups:
  - A. MSM
  - B. Transsexuals
  - C. People who use Drugs
  - D. Sex Workers
  - E. Persons with Disabilities
2. Provide three policy reasons for the Government's inclusion of proper laws to protect the disabled Jamaican
3. Provide three policy reasons for the Government's exclusion of proper laws to protect other vulnerable groups of Jamaicans.
4. David Smith, a person with a disability, applied for a job as a receptionist at Free For All Institute. He was the top student in his receptionist class. His best friend, Ruddy Manners, also applied for the job. Ruddy came 20th in the class of 20 students. They were both given phone interviews. David was advised that he would be offered a job if he brought proof of his certification. After which, they could agree on salary. He wanted \$46,000 per month. They were only prepared to offer him \$42,000. He was told to come and speak with the chairperson of the institute, Ms. Volda Manners. Once he arrived for the interview in his wheelchair, he was told that they could not employ him because the institute could not accommodate a 'cripple'. He was told to go home. While he was at home mulling his next actions, he received a call from an elated Ruddy Manners, informing him that he was the new receptionist at Free For All Institute and that he would be getting the whopping salary of \$60,000.00

David Smith approaches you for advice. What are his options?

## MODULE 16

# TIPS FOR INTERACTION WITH THE JAMAICAN LAW ENFORCEMENT OFFICIALS

### FORMS OF INTERACTION WITH THE POLICE

- I. Being approached by the Police
- II. Being questioned by the Police
- III. Being searched by the police
- IV. Being arrested by the police
- V. Reporting police misconduct
- VI. Reporting crime to police

## BEING APPROACHED BY THE POLICE: WHAT DO I DO?

1. Stay calm! Do not run away. It may be best to stand/sit exactly in the same position you were when the officer approached you. If you run, it may appear that you are guilty of an offence and may also provide the officer with a lawful reason to arrest or shoot you.
2. Be as polite as possible. It may be best to greet the officer. This would be helpful in diffusing a potentially explosive scenario. It is important to ensure that you show no hostility towards the officers. Showing of hostility may escalate the situation.
3. Tell the officer your name and try to get his/her name, identity or any reference number that you can use to identify him/her if the situation escalates.
4. You should also seek to record the license plate number of the vehicle or any special number or reference number being worn by the officer. Examine your surroundings and record the name and faces of any witnesses in the event you may need it.
5. You could also ask the officer to produce his or her identification card or to indicate his or her name and the police station/department that s/he is attached or assigned to. This information is particularly necessary if the officer is in civilian clothes and has no other visible identifying or reference information.
6. Listen carefully to every word spoken by the officer. If the situation becomes tenuous, you may be requested to repeat EXACTLY what you were told.
7. If you have a reason to feel mistreated, you should make a note of everything that occurred and was said to you by the officer. This note may take the form of a written statement or a voice note sent to a dear friend, which is saved for future reference.
8. Please note that you have the right not to answer any self-incriminating questions and to seek legal assistance before you are questioned by the officer.

## WHAT SHOULD I DO IF I AM BEING QUESTIONED BY THE POLICE?

1. If the officer is asking you basic questions in relation to your identity and address, it may be best to answer these questions.
2. If the questions are in relation to a specific offence, you may clearly, but in a respectful tone, ask the officer to indicate whether you are a suspect in the commission of a specific crime.
3. If the officer indicates you are a suspect, you may ask him or her to allow you to call a lawyer or a friend to indicate where you are at the material time.
4. You may then ask if s/he intends to charge you with the relevant offence or if s/he intends to gather evidence from you to charge you.
5. If you feel your actions have been misunderstood, you may clarify any ambiguity and seek to diffuse the situation.

## WHAT TO DO WHEN I AM BEING STOPPED AND SEARCHED BY POLICE?

1. The police do not have an automatic right to stop and search citizens. Generally, there must be some action, activity or information that caused them to form a reasonable suspicion that a crime has been committed, is being committed or is about to be committed that will trigger their right to search citizens.
2. You may ask the officer to state the reason for the search BEFORE s/he commences searching your property or person.
3. If the officer refuses to state the reason, you may, in a firm and polite voice, indicate to him/her that you require the reason for the search to determine whether you can consent to it.
4. If s/he still refuses to provide the reason, you may indicate to them that you will not consent to the search. If s/he provides the reason and you do not think that s/he has a right to search you, you can, in a firm and polite voice, refuse any request for a search. You should record the names of any witness who sees and hears your refusal in relation to the search.
5. If s/he still proceeds to search you, remain calm. Do not give him/her a reason to arrest you. Be careful that you do not twitch or 'box off' his/her hand as this may be construed as 'assaulting the police' and may provide a basis for arresting you for 'resisting arrest'.

## SEARCH WARRANT

1. If the officer states that s/he is searching your premises pursuant to a warrant, you have the right to see and read the search warrant.
2. Demand to see it and ask for a copy. If no copy is available, ask for permission to take a picture of it.
3. If the officers have a search warrant, you may enquire about their powers pursuant to the warrant. Even if they refuse to answer this, if the officers have a warrant, they should be allowed to enter the premises to conduct the search. If you refuse permission, they can simply use force to gain entry to the premises.
4. It may be wise to remain in the presence of the officers conducting the search at all times.
5. Do not answer any questions while they are searching your premises. Your answer may provide the basis for an arrest.
6. If the officer finds any illegal or suspicious item on the premises, they may use this as a basis to arrest you.

## STOPPED BY THE POLICE WHILST DRIVING?

1. You must stop when requested by a police officer to stop.
2. Show restraint and remain calm, even if you believe the police have stopped you unnecessarily.
3. Apart from giving your name and address and showing your driver's licence, you can refuse to answer other questions from the officer.
4. If the police officer behaves in an unprofessional manner, write down or try to remember his/her badge number, name, vehicle registration plate or other identifying marks, should you need to make a complaint.
5. In the event that you are not in possession of your driver's licence, offer to provide some other form of identification.
6. The officer is also empowered by law to take a specimen of breath for a breathalyser test where s/he has reasonable cause to suspect that your alcohol level is higher than the prescribed level.
7. If the police ask to search your vehicle, you can refuse consent if they fail to provide a reasonable basis for the search. The police do not have the right to search your vehicle as a matter of routine.
8. If you refuse consent to the search, you must ensure that you avoid engaging in physical resistance against the police.

## BEING ARRESTED BY THE POLICE

### What to do when you are being arrested

1. If you are arrested or are about to be arrested, ask the officer to indicate the basis for the arrest.
2. You should cooperate. Do not resist arrest. Do not become violent or aggressive. Remain calm, polite and show self-control. Even if you think you have been wrongfully detained and the officer does not show you the respect that is due to you as a citizen, keep calm and continue to show restraint and self-control. Keep a mental note of everything that is happening. You may take action against the officer later.
3. Do not 'twitch' or make any physical contact with the police. Please note that officers often seek to trigger a lawful basis for arrest by the virtue of 'apprehending you'. The officers may then charge you for resisting arrest or any of the related offences.
4. Ask the officer to indicate the reason for the arrest either before, during or after the arrest. The officer MAY also indicate that you are entitled to legal representation.
5. You may ask for a moment to call a friend or a lawyer. This may be helpful in securing your early release.
6. Record everything that takes place after your arrest.
7. You have the right to refuse to answer questions until your legal representative is present. If you cannot afford a lawyer, you can apply for legal aid.
8. If you are carried away from where you were in a police vehicle, ask a friend or bystander to take down the licence plate number of the vehicle and to inform your family.
9. Obtain the name and rank of at least one of the officers who is arresting you.
10. Ask for a phone call or ask to send a message or a note right away and keep asking until you can reach someone. Let them know what has happened and where you are.
11. You should be taken to a station or police lock-up or, if injured, to the hospital.
12. While you are at the station, you may be granted station bail.
13. If you are not granted station bail, you are taken into custody and put in police lock-up until you appear in court.
14. The final decision about granting or denying you bail lies with the Court.
15. You should note the time of your arrest and the time of your release.

16. As soon as you are released, make written notes in relation to the reasons for your release and the length of your detention.

## What to do after you are arrested?

1. Verify that you are under arrest by confirming that you are NOT free to leave the police compound/presence. The police have the right to hold you for up to 24 hours before they charge you.
2. Ensure that you are advised of the charge/reason for your detention. If the police fail to provide same, please ensure that you request the reason for your detention.
3. Ensure that you ask for phone call or to make a phone call. You should then call either a family member or trusted friend or lawyer to advise them of your location and to request that they visit you.
4. Ensure that you ask to see a doctor if you are ill or injured. This request should be noted by the police. If you do not receive medical attention, your family/friends may seek to engage a medical doctor who may visit you at the holding area. This doctor may be required to carry proof of his accreditation and an official ID from the relevant accreditation entity.
5. Ensure that you ask if bail will be offered to you. If bail will not be offered, ensure that you find out the basis for the refusal of bail.
6. If you are being wrongfully denied bail, ask to see a justice of the peace or senior police in charge of the station

## What to do to get bail

1. Once an application is made for bail at court, if it is granted, the information needed for bail can be brought to the Parish Court Registry or the Supreme Court Registry, as the case may be, and a receipt is issued.
2. Information needed to get bail include:
  - Two passport-size photographs of surety
  - Recommendation from a justice of the peace in the prescribed Form or letter.
  - Proof of Address – utility bills, e.g., light/water/phone bill
  - A valid national ID of surety copy of the ID
  - Collateral –
    - motor car – vehicle registration, fitness, title and certificate of insurance, (ii) registered land – title deed, if title is in also in the name of another person, the written consent of other person must be obtained
    - Financial statement – recent bank state or statement of account,
    - Cash- consult the court office
3. Once the documents are presented, the Court Registry will review same and advise if they require any further information, including valuation of the collateral.
4. If the documents are successfully processed, the person who is detained may be released in the custody of the surety.
5. The surety is to ensure that the person who is bailed attends court. If the person on bail fails to attend court, the surety will be called upon to pay the bail sum. If the person who was bailed absconds, the surety will have to pay the bail sum. The payment of the bail sum does not abscond the absconder from attending court and answering to the criminal charges.

## REPORTING POLICE MISCONDUCT

1. If you are the victim of a police beating or any general police misconduct, you have a right to report this misconduct to INDECOM, the public defender, the inspectorate of the constabulary or the JCF.
2. Ensure you receive some proof of the making of the complaint
3. Get a date or timeline that you can check back to see what steps have been taken to investigate this matter.
4. Follow up to receive a copy of INDECOM's report with suggested action.

## REPORTING CRIME TO THE POLICE

1. To report a crime, simply visit a police station. It may be best to call in before visiting and to give an idea of the nature of the complaint to the officer who answers the call and also to advise him or her that you are coming. It may be best to get an idea as to which officer will take your complaint before you enter the station.
2. Ask for written confirmation of statement. Some officers will photocopy it while others will allow you to take picture of it.
3. Find out who is responsible for your case and ask about the next steps.
4. Ascertain when you can call the respective officer to check the progress of the case or to provide additional information.
5. Remember to be polite and firm since a soft answer may turneth away wrath while grievous words may stir up anger.

### ACTIVITY

In FOUR groups, review the following and present your findings.

You are an upright citizen of your country. You are driving a car when the police officers stops you and tells you that s/he wants to randomly search the car. You ask him/her to produce his/her ID. S/He refuses and instead demands that you produce your ID. You do not have a copy of your identity on you and remark that you can produce it within 24 hours at the nearest police station. The police then orders you out of the car and says that s/he will randomly search your car. You refuse the search after you come out of the car. They then demand a search of your person and proceed to search you. You resist and are arrested for assaulting a police officer. You are released within 4 hours of your arrest without charge.

Consult with your group on the best way to address this situation. Prepare a presentation on how you will deal with the problem.

## MODULE 17

# LEGAL REMEDIES IN JAMAICA

### BRIEF CONTENTS OF MODULE

- I. Options for legal assistance for rights violation in Jamaica
- II. Legal Remedies
- III. Legal Systems
- IV. Court structure and framework in Jamaica

## WHAT ARE POSSIBLE OPTIONS FOR LEGAL ASSISTANCE IF MY RIGHTS ARE BEING VIOLATED?

It is important to know the possible options that you can take if you are being mistreated or abused. The most important thing is to keep calm and to try your best not to assist the violator to escalate the situation. It is best to ensure that you try your best to comply first and then complain later. Please ensure that you try to document the name of the relevant offending officers or any other information that can be used to identify them later.

The following entities may be able to assist you in seeking redress for human rights violations in Jamaica:

### Legal Aid

**A. Legal Aid Council**

72 Harbour Street  
Kingston  
Tel: 948-6999

**B. Kingston Legal Aid Clinic**

131 Tower Street  
Kingston  
Tel: 922-3792/3761/3556

**C. The Norman Manley Law School Legal Aid Clinic**

137 Gibraltar Camp Road  
University of the West Indies  
Mona, Kingston 7  
Tel: 927-1007

### The Office of the Public Defender

22 - 24 Duke Street,  
Kingston  
Tel: 922-7089/968-1932

### INDECOM

1 Dumfries Road  
Kingston 10  
Tel: 920-2324/968-1932

### Inspectorate of Constabulary

3 Floor, 2 Oxford Road  
Kingston 5, Jamaica  
Tel: 906-0837

## **Attorney General Chambers**

North Tower  
2 Oxford Road Kingston 6  
Tel: 906 - 2414/754-5158

## **Civil Society Organizations**

### **Jamaicans for Justice**

2 Fagan Avenue, Grants Pen  
Kingston 8  
Tel: 755-4355/4524

### **Jamaica Aids Support for Life**

3 Hendon Drive  
Kingston 20, Kingston  
Tel: 925-0021/2

### **Jamaica Forum for Lesbians, All-Sexuals and Gays.**

Tel: 754 – 2130  
Flow: 631-8654  
Digicel: 379-9834  
Email: [admin@jflag.org](mailto:admin@jflag.org)

### **Dispute Resolution Foundation**

1A North Avenue,  
Kingston Gardens  
Kingston 4, Kingston  
Tel: 906-2456/908-3657

### **The Independent Jamaica Council for Human Rights**

131 Tower Street  
Kingston  
Tel: 967- 1204

## LEGAL REMEDIES

The appropriate remedy for each case is dependent on the duty the person owed to the injured party as well as the nature of the said breach of the duty. For example, if Tom Strokes is wrongfully detained by Officer Big Stick for 14 days without being advised of his remedies. This would clearly be in breach of the law.

### What are the Possible Remedies

There are numerous remedies available for breach of citizen's rights in Jamaica.

These remedies include:

1. declarations,
2. damages (monetary compensation),
3. Judicial Review Remedies
4. protection orders,
5. occupation orders; and
6. other court orders.

These orders are available after the aggrieved party or their representative petition the respective court to seek these orders. .

## LEGAL SYSTEM

Jamaica is a constitutional democracy. The Constitution of Jamaica is the supreme law of Jamaica. On attaining independence in 1962, Jamaica adopted a Constitution, which was amended in 2011. The Constitution is the document that protects our fundamental rights.

Section 2 of the Constitution ('the Supremacy of Constitution') states that if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

The Constitution sets out in Chapter 3, fundamental rights that the State and its agents agree that every citizen has the right to. These rights should not be violated. If they are violated, citizens can apply, under the Constitution, for the Courts to declare that their rights were violated. Citizens are entitled to seek monetary compensation for any violation.

The section of the Constitution relating to the protection of human rights is captured in

13. – 1(1) *Whereas-*

- a. *(a) the state has an obligation to promote universal respect for, and observance of human rights and freedom*
- b. *all persons in Jamaica are entitled to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as person and as citizens of a free and democratic society; and*
- c. *all persons are under a responsibility to respect and uphold the rights of others recognized in this Chapter.*

*the following provisions of this Chapter shall. have effect for the purpose of affording protection to the rights and freedoms of persons as set out in those provisions, to the extent that those rights and freedoms do not prejudice the rights and freedom of others.*

13 (2)

- b. Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges or infringes those rights.*

*(3) The rights and freedoms referred to in subsection*

*(2) are as follows-*

- a. the right to life, liberty and security of the person and the right not to be deprived thereof except in the execution of the sentence of a court in respect of a criminal offence of which the person has been convicted;*
- b. the right to freedom of thought, conscience, belief and observance of political doctrines; (c) the right to freedom of expression;*

*(4) the right to seek, receive, distribute or disseminate information, opinions and ideas through any media;*

- e. the right to freedom of peaceful assembly and association;*
- f. the right to freedom of movement, that is to say, the right-*
  - i. of every citizen of Jamaica to enter Jamaica; and*
  - ii. of every person lawfully in Jamaica, to move around freely throughout Jamaica, to reside in any part of Jamaica and to leave Jamaica;*
- g. the right to equality before the law;*
- h. the right to equitable and humane treatment by any public authority in the exercise of any function;*
- i. the right to freedom from discrimination on the ground of-*
  - i. being male or female;*
  - ii. race, place of origin, social class, colour, religion or political opinions*
- j. the right of everyone to-*
  - i. protection from search of the person and property;*
  - ii. respect for and protection of private and family life, and privacy of the home; ,*
  - iii. protection of privacy of other property and of communication;*

*(4) This Chapter applies to all law and binds the legislature, the executive and all public authorities.*

*(5) A provision of this Chapter binds natural or juristic persons if, and to the extent that, it is applicable, taking account of the nature of the right and the nature of any duty imposed by the right.*

*(6) No person shall be subjected to torture or inhuman or degrading punishment or other treatment.*

## Redress Clause

*19.-(1) If any person alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.*

*(2) Any person authorized by law, or, with the leave of the Court, a public or civic organization, may initiate an application to the Supreme Court on behalf of persons who are entitled to apply under subsection (1) for a declaration that any legislative or executive act contravenes the provisions of this Chapter. I*

*(3) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.*

*(4) Where any application is made for redress under this Chapter, the Supreme Court may decline to exercise its powers and may remit the matter to the appropriate court, tribunal or authority if it is satisfied that adequate means of redress for the contravention alleged are available to the person concerned under any other law.*

*(5) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.*

*(6) Parliament may make provision or authorize the making of provision with respect to the practice and procedure of any court for the purposes of this section and may confer upon that court such powers, or may authorize the conferment thereon of such powers, in addition to those conferred by this section, as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.*

# COURT STRUCTURE AND FRAMEWORK IN JAMAICA

Jamaica's legal system is represented in the executive by the Ministry of Justice. Jamaica's court structure is as follows:

1. Parish Court (this includes the Drug Court)
2. Supreme Court
3. Court of Appeal
4. Privy Council/Caribbean Court of Justice

## Parish Court

The Parish Courts are the largest courts in Jamaica in relation to the volumes of cases they would hear on any given day. Section 3 of the Judicature (Parish Court) Act provides for the jurisdiction of the Parish Court to be administered in each parish.

Cases are presided over by parish judges who have jurisdiction to hear criminal and civil matters where the possible remedy/fine would be below a certain sum. For example, the Parish Court judges are empowered to hear cases of minor assault, petty theft, abusive language, landlord and tenant claims and claims for debts under \$1,000,000.00.

There are parish courts in every parish and most of the cases brought by the police and individuals are heard therein. A person may, however, bring a private criminal action in the Parish Court.

This court also conducts hearings into the merits of charges for indictable offences, such as rape, manslaughter, murder and treason. The parish judge, after hearing and assessing the evidence led before him, may commit the accused to stand trial in the High Court. If insufficient evidence was found to have been led, then the accused would be discharged. This discharge is not an acquittal. Charges may again be brought against a person for the same alleged offence.

## Supreme Court

The Supreme Court of Jamaica is duly constituted under section 97 of the Constitution of Jamaica. The Court has jurisdiction to hear civil and criminal matters as well as appeals from the lower Courts. The Court is headed by the Chief Justice. It has a Civil, Criminal, Probate and Matrimonial Divisions. The Chief Justice sits in both criminal and civil divisions.

## Court of Appeal

The Court of Appeal of Jamaica was established under section 103 of the Constitution of Jamaica. The Court of Appeal exercises an appellate jurisdiction with power to hear and determine appeals in both civil and criminal matters.

## Privy Council

The Privy Council is the final appeal Court in Jamaica. It is officially referred to as Her Majesty in Council. It hears both civil and criminal appeals which emanates from the Jamaican Court of Appeal. The Jamaican Constitution codifies the right to appeal to Her Majesty in Council in cases where it involves final decisions in any civil proceedings and other cases listed in section 110 (1) of the Jamaican Constitution.

## CASE STUDY:

### Leonie Marshall v Director of Public Prosecution [2007] UKPC 4

On the 13 December 1999, Patrick Genus was fatally shot by three members of the Jamaican Constabulary Force (the JCF). The shooting occurred at Mona in the parish of St. Andrew. The State alleged that Mr. Genus was killed in a shoot-out when he faced the officers. The first contact with the deceased was made by Cpl James, who deposed that at 5.10 pm approximately on 13 December 1999 he was travelling in his private car on Hope Boulevard, St Andrew when he saw two men on a motor cycle. He suspected that they had been involved in local robberies and followed them at a distance, summoning assistance from his station. This came in the form of Det Cpl Francis and Cpl Grant in a police car.

The three officers drove to a point about 35 yards from where the two men had alighted from the motor cycle and got out of their cars. When they saw the officers both men pulled guns from their waistbands and fired at them. James returned fire while the other two officers took cover. One of the two men jumped on to the motor cycle and made his escape. The other, later identified as Patrick Genus, climbed a fence into the grounds of a school and while he was scaling it Francis fired one shot at him. He ran across a playing field towards some bushes, with the officers in pursuit. As he ran he fired another shot at the officers and Francis fired another two shots at him. The officers headed after him into the bushes.

While they were searching for him, Genus appeared out of the bushes and fired at them. James and Grant both returned fire and Genus fell to the ground, bleeding and apparently dead. James fired six shots in all in the course of the incident, Francis three and Grant four. They each deposed that they found beside Genus' body with a Smith & Wesson .38 revolver, with four spent cartridges and one live round in the chamber. He was taken at once to hospital,

where he was pronounced dead on arrival. It was suggested to the officers in cross-examination by counsel for the next-of-kin at the inquest that the deceased had been shot in the back of the head when they went up to him after he fell, but they all denied the suggestion.

The Post mortem revealed that Patrick had three head injuries. The Pathologist attributed death to the head wounds. There was no gunpowder deposition at the site of any of the wounds, which indicated that they had been fired from a distance greater than close range, normally placed at two to three feet. The Pathologist noted that the wounds were consistent with the deceased running away from the person firing and perhaps turning his head when hit.

An inquest into the death of the deceased was held in April and May 2001. On 27 May the jury returned a verdict that the deceased died as a result of gunshot wounds, adding the words recorded in the inquisition “And do further say person or persons criminally responsible.” The Coroner told the jury when they were about to deliver their decision that they should not “call any names”.

As the inquisition did not charge any specific person with murder or manslaughter, the Coroner referred the matter to the DPP. The DPP examined the material available to him and decided that no prosecution should be brought against anyone, on the ground of insufficient evidence on which to base a charge.

The mother of the deceased, Ms. Leonie Marshall, challenged the decision of the DPP not to bring prosecutions against police officers in relation to the death of her son.

The case started when she filed an action in the Supreme Court. The appellant brought an application for judicial review of the DPP’s decision in the supreme court claiming that the DPP ought to have charged the three police officers with the murder of Patrick Genus. The basis of the claim was that there was sufficient material in the inquest depositions to throw doubt on the veracity of the officers’ evidence and create a prima facie case that they were not acting in self-defence as they had averred. The appellant also sought judicial review of the DPP’s decision not to disclose any further reasons for not instituting proceedings against the officers. A single Judge and the Full Court of the Supreme Court refused to grant the Application.

Ms. Marshall appealed the decision of the Supreme Court to the Court of Appeal which agreed with the Supreme Court. The Court of Appeal refused to reverse the decision of the Supreme Court Judges.

Ms. Marshall then appealed to the Privy Council which held importantly that, whilst the decision of the DPP not to prosecute was susceptible to judicial review, that power of review was to be exercised sparingly. The Privy Council did not agree that the facts of this case were susceptible to review. Accordingly, the appeal was dismissed. The Privy Council however accepted that the decision of the DPP was susceptible to judicial review.

## ACTIVITY

Divide the group into four separate units. Each unit is asked to review the following questions and present to the entire group.

1. While at your office, Ms. Tom Strokes enters stating that she was arrested by the police for wearing a dress in the middle of the town. She wore the dress simply because it was her best way to express how she felt inside. She had always worn a dress while inside her house because she preferred to wear female attire despite being born a male. She simply took a stroll down Georgetown and was seen by Officer Nuffy, who decided to arrest her as part of his personal bid to crack down on cross dressers.

Ms. Tom Strokes is kept in custody for more than six days without being charged or advised about the reason for her arrest. She tells you that she asked numerous times to be advised of the reason for her arrest, but was never given a reason for the arrest. It was not until she was being released on the premise that she was going to face the Chief Magistrate to explain why she was wearing women's clothing.

Her matter is now before the court. She is to appear in the Resident Magistrate's Court within 14 days. Ms. Tom Strokes attends your office seeking advice as to what she should do and say in court. She also wants advice on how she can assist in ensuring that this type of action by the police does not reoccur or go unnoticed.

Advise her.

2. Examine the Patrick Genus case study above. Please use this case study to illustrate how the claimant might engage the different court hierarchy in Jamaica.

## MODULE 18

# LEGAL OPTIONS OUTSIDE OF JAMAICA

Persons aggrieved by a decision of the State or any other Jamaican authority may also take up their grievances with international bodies that monitor any of the rights conventions to which Jamaica is party. Aggrieved persons may not be able to present their individual complaints to every institution, but, at a minimum, they could engage local NGOs that could document the specific problem and report it by meeting with or submitting information to a rapporteur/commission/committee. They can use the Committee report or concluding observations to educate the public or press. This can raise awareness of a human rights problem and increase pressure for action.

## See the following Ratification, Reporting & Documentation for Jamaica

| <b>Treaty</b>                                                                                                                                   | <b>Signature Date</b> | <b>Ratification Date, Accession(a),<br/>Succession (s) Date</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------|
| CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment                                                   |                       |                                                                 |
| CAT-OP - Optional Protocol of the Convention against Torture                                                                                    |                       |                                                                 |
| CCPR - International Covenant on Civil and Political Rights                                                                                     | 19 Dec 1966           | 03 Oct 1975                                                     |
| CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty |                       |                                                                 |
| CED - Convention for the Protection of All Persons from Enforced Disappearance                                                                  |                       |                                                                 |
| CEDAW - Convention on the Elimination of All Forms of Discrimination against Women                                                              | 17 Jul 1980           | 19 Oct 1984                                                     |
| CERD - International Convention on the Elimination of All Forms of Racial Discrimination                                                        | 14 Aug 1966           | 04 Jun 1971                                                     |
| CESCR - International Covenant on Economic, Social and Cultural Rights                                                                          | 19 Dec 1966           | 03 Oct 1975                                                     |
| CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families                             | 25 Sep 2008           | 25 Sep 2008                                                     |
| CRC - Convention on the Rights of the Child                                                                                                     | 26 Jan 1990           | 14 May 1991                                                     |
| CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict                     | 08 Sep 2000           | 09 May 2002                                                     |
| CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography     | 08 Sep 2000           | 26 Aug 2011                                                     |
| CRPD - Convention on the Rights of Persons with Disabilities                                                                                    | 30 Mar 2007           | 30 Mar 2007                                                     |

# INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR, 1966)

The ICCPR is a multilateral treaty adopted by the United Nations and it commits its State Parties to respect the civil and political rights of individuals including the right to life, freedom of religion, freedom of expression, freedom of assembly, electoral rights, rights of due process and to a fair trial, and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. The Human Rights Committee (HRC) monitors implementation of the International Covenant on Civil and Political Rights and its optional protocols.

The Universal Periodic Review (UPR) is a unique mechanism of the Human Rights Council (HRC) aimed at improving the human rights situation on the ground of each of the 193 United Nations (UN) Member States. (see [www.Upr-info.org](http://www.Upr-info.org) for further info.)

Under this mechanism, the human rights situation of all UN Member States is reviewed every 5 years. These three sessions are usually held in January/February, May/June and October/November. The result of each review is reflected in an “outcome report” listing the recommendations the State under Review (SuR) will have to implement before the next review.

The UPR is a full-circle process comprised of 3 key stages:

1. Review of the human rights situation of the state under review;
2. Implementation between two reviews (5 years) by the State Under Review of the recommendations received and the voluntary pledges made;
3. Reporting at the next review on the implementation of those recommendations and pledges and on the human rights situation in the country since the previous review.

Jamaica's next review session is May 2020

Jamaica's last session was on the 13 May 2015. The Mid-term reporting period will occur in November 2017. Stakeholders' deadline for submission of reports for the 2020 session is 19 September 2019. The recommended drafting period is July 2019 – 19 September 2019. This would ensure that there is sufficient time for advocacy before the next UPR in May 2020.

## INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The ICESCR calls on its State Parties to undertake and to work towards the granting of economic, social, and cultural rights to individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. The UN Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966). Jamaica signed the ICESCR on 06 September 2000 and ratified it on the 09 March 2015.

## CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

This Convention deals specifically with the protection of the rights of children, setting out the civil, political, social, health and cultural rights of children. Under the CRC, a child is defined as a person under the age of eighteen years, unless the domestic legislation in a particular State declares that the age of majority is attained earlier. The Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000).

## CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW is described by the United Nations as an international bill of rights for women. The Convention reaffirms its faith in fundamental human rights, in the dignity, and worth of the human person, and in the equal rights of men and women. It details the meaning of equality and how it can be achieved. Several dimensions of discrimination of women are addressed. These include the civil and legal status of women, reproductive rights, equality in relation to men on issues such as public and political life, education, cultural life and economic rights.

Committee on the Elimination of Discrimination against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999).

## CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD)

CERD commits its members to the elimination of racial discrimination and the promotion of understanding among all races. As such State Parties are obligated to ensure the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and to the enjoyment of the rights and freedoms outlined in the Convention. Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

# INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

CRPD commits its members to protect the rights and dignity of persons with disabilities. Parties to the convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. It came into force on 3 May 2008. Committee on the Rights of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006).

## INTER-AMERICAN SYSTEM

The Inter-American System for the protection of human rights is one of the world's three regional human rights systems, and is responsible for monitoring and ensuring implementation of human rights guarantees in the 35 independent countries of the Americas that are members of the Organization of American States (OAS).

The Inter-American System is composed of two entities: a Commission and a Court. Both bodies can decide individual complaints concerning alleged human rights violations and may issue emergency protective measures when an individual or the subject of a complaint is in immediate risk of irreparable harm. Jamaica is not a signatory to the Inter-American Court.

### Mandate and Functions of the Commission

The principal function of the IACHR is to promote the observance and protection of human rights in the Americas. As Article 106 of the Charter of the Organization provides,

[t]here shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.

An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters.

In furtherance of its mandate, the Commission:

1. Receives, analyzes and investigates individual petitions in which violations of human rights are alleged to have been committed either by a Member State of the OAS that has ratified the American Convention or by one that has not.
2. Observes the general situation of human rights in the Member States and publishes, when it deems appropriate, reports on the situation in a given Member State.
3. Conducts in loco visits to countries to conduct an in-depth analysis of the general situation and/or to investigate a specific situation. In general, these visits lead to the preparation of a report on the human rights situation observed, which is published and presented to the Permanent Council and to the General Assembly of the OAS.

4. Develops an awareness of human rights among the peoples of the Americas. To that end, the Commission prepares and publishes reports on specific issues, such as: the measures that must be taken to ensure greater access to justice; the effects that internal armed conflicts have on certain groups; the human rights situation of children, women, and migrant workers and their families, persons deprived of liberty, human rights defenders, indigenous persons, persons of African descent; freedom of expression; citizen security and terrorism, and how they relate to human rights, and so on.
5. Organizes and holds visits, lectures, seminars and meetings with government representatives, academic institutions, nongovernmental organizations and others for the purpose of communicating information and promoting a broad understanding of the work of the inter-American human rights system.
6. Recommends to the OAS Member States the measures they should take the better to protect human rights in the countries of the hemisphere.
7. In serious and urgent cases, requests Member States to adopt precautionary measures, in keeping with Article 25 of its Rules of Procedure, in order to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case. Furthermore, under Article 63(2) of the American Convention, in cases of extreme gravity and urgency the Commission may request that the Inter-American Court order the adoption of "provisional measures" to prevent irreparable harm to persons, even when the case has not yet been submitted to the Court.
8. Presents cases to the Inter-American Court and appears before the Court during the processing and consideration of cases.
9. Requests advisory opinions of the Inter-American Court, pursuant to Article 64 of the American Convention.
10. Receives and examines communications in which a State party alleges that another State party has committed a violation of a human right protected under the American Convention, pursuant to Article 45 thereof.

The following is an extract from the IACHR brochure which is found on their website at <http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>

## WHAT IS THE COMMISSION'S FUNCTION?

The Commission's function is to promote the observance and defense of human rights in the Americas. The Commission performs this function by

1. making visits to the countries
2. carrying out thematic activities and initiatives
3. preparing reports on the human rights situation in a certain country or on a particular thematic issue
4. adopting precautionary measures or requesting provisional measures before the Inter-American Court, and
5. processing and analyzing individual petitions with a view to determining the international responsibility of the States for human rights violations, and issuing the recommendations it deems necessary.

The State may be responsible for violating human rights by:

- ▶ action (as a result of an act by the State or its agents),
- ▶ acquiescence (as a result of the tacit consent of the State or its agents), or
- ▶ commission (as a result of the State or its agents failing to take action when they should have done so)

## Can the Commission determine the liability of an individual person?

No. The Commission is not competent to attribute individual liability, that is, it cannot determine whether an individual person is or is not guilty. The Commission can only determine the international responsibility of a Member State of the OAS.

## In which cases will the Commission not be able to help me?

The Commission cannot:

- ▶ issue a ruling with respect to a State that is not a member of the OAS;
- ▶ provide attorneys to assist in domestic judicial proceedings or to submit a petition or request for precautionary measures to the Commission;
- ▶ provide economic assistance or materials and supplies to persons;
- ▶ undertake immigration procedures, or process the granting of visas or political asylum.

## Petition

By filing a petition before the Inter-American Commission on Human Rights, victims of human rights violations can obtain help. The Commission investigates the situation and can make recommendations to the State responsible to restore the enjoyment of rights whenever possible, to prevent a recurrence of similar events, to investigate the facts and to make reparations to victims of rights violation.

### Every petition should include:

- a. the personal information of the alleged victim(s) and that of his/her next of kin;
- b. the personal information on the petitioner(s), such as complete name, phone number, mailing address, and email;
- c. a complete, clear, and detailed description of the facts alleged that includes how, when, and where they occurred, as well as the State considered responsible;
- d. an indication of the State authorities considered responsible;
- e. the rights considered violated, if possible;
- f. the judicial bodies or authorities in the State to which one has turned to remedy the alleged violations;
- g. the response of the State authorities, especially of the courts of justice;
- h. if possible, uncertified and legible copies of the principal complaints and motions filed in pursuit of a remedy, and of the domestic judicial decisions and other annexes considered relevant, such as witness statements; and
- i. an indication as to whether the petition has been submitted to any other international organization competent to resolve cases.

If possible, it is recommended that a list be included numbering the annexes attached to the petition to facilitate their identification.

### **Where do I send my request for precautionary measure?**

Request for precautionary measures may be sent via::

email to [cidhdenuncias@oas.org](mailto:cidhdenuncias@oas.org)

Fax: +1 (202) 458-3992 or 6215 or

Online Portal: <https://www.oas.org/ipsp/default.aspx?lang=es>

via Mail to

Inter-American Commission on Human Rights

1889 F Street N.W.

Washington, D.C. 20006

United States

### **Who may submit petitions?**

The individual petitions that the Commission examines may be submitted by individuals, groups of individuals, or organizations that allege violations of the human rights guaranteed in the American Declaration of the Rights and Duties of Man ("the American Declaration"), the American Convention on Human Rights ("the American Convention"), and other inter-American human rights treaties.

### **Against whom can I file a petition alleging a violation of human rights?**

The complaint must be filed against one or more Member States of the OAS considered to have violated the human rights contained in the American Declaration, the American Convention, and other inter-American human rights treaties.

### **What results can I expect if I file a petition alleging a violation of human rights against a Member State of the OAS?**

If the Commission determines that a State is responsible for having violated the human rights of a person or group of persons, it will issue a report that may include the following recommendations to the State:

- a. suspend the acts in violation of human rights;
- b. investigate and punish the persons responsible;
- c. make reparation for the damages caused;
- d. make changes to legislation; and/or
- e. require that the State adopt other measures or actions. In addition, a friendly settlement of the matter may be pursued with the State.

# CASE STUDY:

## Michael Gayle Case – Report No. 92/05

Petition was presented to the Inter-American Commission on Human Rights (“the Commission”) on March 29, 2002 by Jamaicans for Justice, a non-governmental organization based in Kingston, Jamaica, (“the petitioner”) against the Government of Jamaica (“the State” or “Jamaica”). The petition was presented on behalf of Mr. Michael Gayle who died in Jamaica on August 23, 1999 (“Mr. Gayle”).

The petitioner alleges that the State has violated the rights of Mr. Gayle as set forth in the American Declaration on the Rights and Duties of Man (“the Declaration”).

“The Petitioners allege that on Saturday, August 21, 1999, a curfew was imposed in the areas of Olympic Gardens, Kingston, Jamaica. At approximately 7:30 p.m. Michael Gayle left his home in Olympic Gardens intending to give a message to his friend down the road. Mr. Gayle was of unsound mind. As Mr. Gayle approached a barricade, members of the joint patrol team consisting of policemen and soldiers informed him of the curfew. An altercation ensued, in the course of which several police and soldiers severely beat Mr. Gayle while other members of the security force observed the assault. After the incident, Mr. Gayle was taken to the Olympic Gardens Police Station and charged with assaulting a police officer and resisting arrest. He was subsequently taken to the Kingston Public Hospital after he had begun to vomit blood and food. Mr. Gayle was released the next morning but he was taken to the hospital again the following Monday morning, August 23, 1999, when his conditions worsened. He was rushed to the emergency room where he was pronounced dead.

The autopsy reported that he had died from complications due to traumatic rupture of the stomach. The pathologist who examined Mr. Gayle’s body confirmed that his injuries were consistent with a beating that involved gun butts, punches and kicks with military boots.

Coroner’s Inquest into the case was held in December of 1999. The jury in the Coroner’s Inquest found that joint security forces had excessively beaten Michael Gayle on August 21, 1999 and that all members of the security forces manning the barricade that night should be charged with manslaughter. The Director of Public Prosecutions (“DPP”) ruled on March 13, 2000 that there was not sufficient evidence to charge anyone in the matter. The file was sent back to the Bureau of Special Investigations (“BSI”) for further investigation. On August 17, 2000 the BSI reported to the DPP that no new information had been discovered and recommended that the file be closed. According to the Petitioners, the file remains with the DPP awaiting closure or other activity.”

The Petitioners claim that the State is responsible for the violation of Mr. Gayle’s right to life contrary to Article 4(1) of the Convention due to the deliberate and excessive assault of Mr. Gayle by State agents that directly resulted in his death. The Petitioners submit that Mr. Gayle’s right to life was violated by the State in its failure to ensure:

1. the use of lethal force only where absolutely necessary;
2. proper preparation and planning of potentially lethal operations;
3. an independent and impartial investigation where there has been a potential violation;
4. due process in the prosecution of the perpetrators.
5. due prosecutorial process be applied to the security forces who were present at the barricade the night of Mr. Gayle’s assault; and that appropriate steps be taken that would prevent agents of the State from violating the fundamental right to life in the future.

The state responded in detail to the Petition brought by Jamaicans for Justice. It accepted that state actors caused the death of Michael Gayle and that Michael Gayle was subjected to a collective beating by State agents. The commission found that the assault lasted approximately 12 minutes, during which time Mr. Gayle was beaten with gun butts, punched and kicked with military boots. The assaults were so severe that they caused Mr. Gayle's stomach to rupture, which resulted in his death two days later. Prior to his death, Mr. Gayle continued to suffer from the injurious effects of his beating. Mr. Gayle did not receive prompt medical attention for his injuries. After the beating had occurred, he was taken to the police station and falsely charged with assaulting a police officer and resisting arrest before his mother was permitted to take him to the hospital. According to the testimony of Mr. Gayle's sister, Ingrid Cameron, at the Coroner's Inquest, Mr. Gayle waited more than two hours to see a doctor on the day of his death. The forensic pathologist who performed the autopsy on Michael Gayle's body indicated that with prompt and proper medical attention, Michael Gayle could have survived his injuries.

The beating of Michael Gayle by security force members was intentional, was purported to have been imposed as a measure to prevent Mr. Gayle from crossing the curfew barricade, was excessive, and caused severe physical and mental pain and suffering. These factors, together with the nature and intensity of the treatment inflicted upon Mr. Gayle, including the failure to provide him with prompt medical attention and the protracted suffering caused to Mr. Gayle as a result, lead the Commission to conclude that Mr. Gayle was the victim of torture. The Commission also noted that Mr. Gayle's right to personal liberty was infringed.

In this case, the commission concluded that the state was responsible for violating Mr. Gayle's right:-

1. to life, because of his unlawful killing at the hands of members of the Jamaican security forces.
2. not to be subjected to torture and other inhumane treatment because of the assault perpetrated upon him by State agents and its effects, which led to his death.
3. to personal liberty because of his unlawful detention and arrest on false charges
4. to a fair trial and to judicial protection by failing to undertake a prompt, effective, impartial and independent investigation into human rights violations committed against Mr. Gayle and to prosecute and punish those responsible.

## **The Commissions called for the state to:**

1. Grant an effective remedy, which includes the payment of compensation for moral damages suffered by Michael Gayle's mother and next-of-kin, Jenny Cameron, and a public apology by the State to the family of Michael Gayle.
2. Adopt such legislative or other measures as may be necessary to undertake a thorough and impartial investigation into the human rights violations committed against Mr. Gayle, for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations.
3. Adopt such legislative or other measures as may be necessary to prevent future violations of the nature committed against Mr. Gayle, including training for members of Jamaican security forces in international standards for the use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, summary executions and arbitrary detention, and undertaking appropriate reforms to the procedures for investigating and prosecuting deprivations of life committed by members of Jamaica's security forces to ensure that they are thorough, prompt and impartial, in accordance with the findings in the present report. In this respect, the Commission specifically recommends that the State review and strengthen the Public Police Complaints Authority in order to ensure that it is capable of effectively and independently investigating human rights abuses committed by members of the Jamaican security forces.

## Update

The Government has granted some form of compensation to Ms. Jenny Cameron by the payment of approximately \$3 Million Jamaican Dollar and the delivery of an 'apology'. This is reportedly the first case in which the Commission recommended that the GOJ provide payment of compensation in Jamaica. JFJ utilized the Commission's report and kept press conferences and made press release to ensure the public was informed of the commission's recommendation. The GOJ was forced to respond by holding its own press conference.

## Precautionary Measures

In certain serious and urgent situations, and provided that certain requirements are met, the Commission may adopt precautionary measures.

Precautionary measures calls on the state to take steps to protect a person(s) who is in imminent peril. A person needs a precautionary measure when there is reason to believe that they are at risk of injury to their basic human rights. The precautionary measure would normally be given where money would not be an adequate compensation to the injured person. The IACHR's authority to request urgent measures is reflective of a common practice in international human rights law.

You do not need a lawyer to file a request for precautionary measure. You can file your request for precautionary measure yourself without the assistance of a lawyer. There is no fee for submitting a request for precautionary measures.

The request for a precautionary measure can be sent in the form of a letter. It should include the following information:

### **A. Personal Information**

- i. the applicant's name, telephone, mailing address, fax, email, contact number.
- ii. Whether the applicant wishes to keep his identity secret.
- iii. The name of class of proposed beneficiary and contact number of the beneficiary. This information should be clear enough for the state to know which beneficiary should be protected.

### **B. Facts Alleged**

- i. A detailed and chronological description of the facts that shows the existence of a serious and urgent situation and irreparable harm.
- ii. The current situation of the persons proposed as beneficiaries and their degree of risk.
- iii. If possible, legible, uncertified copies should be sent of the documents needed to understand the situation of the proposed beneficiary, such as copies of complaints presented to the authorities, medical certificates in situations involving health, and any other relevant legal motions that have been presented. If it is not possible to send these documents, the reasons should be provided. Photocopies of documents do not require any formality, that is, it is not necessary that they be certified, notarized or legally authenticated. One need not send several copies of the same document. If the request and its annexes are sent by mail, it is preferable that the documentation not be bound or laminated in any way.

**C. Complaints to State Authorities**

- i. An explanation of whether the facts alleged have been reported to the authorities or whether the State has been asked to provide protection, and a description of the response, if any; or an explanation of why it has not been possible to put such protection in place.
- ii. An indication as to whether the person or group or persons proposed as beneficiaries already has any measures of protection domestically. If so, provide an explanation of how effective those measures have been.

**D. Measures requested** – A description of the measures of protection or others measures that have been requested.

**E. Information as to whether you filed a petition/case before commission**

- i. Indicate whether the applicant/beneficiary has already filed a petition or has a case pending before the Commission.
- ii. if so, the date of submission of the petition and the reference number assigned to the petition or case should be included

**Requests for precautionary measures may be sent**

- A. via email to [cidhdenuncias@oas.org](mailto:cidhdenuncias@oas.org)
- B. via Fax: +1 (202) 458-3992 or 6215 or
- C. via Mail to  
**Inter-American Commission on Human Rights**  
**1889 F Street N.W.**  
**Washington, D.C. 20006**  
**United States**

The relevant article is set out below:

**Article 25. Precautionary Measures**

1. *In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case.*
2. *In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any pending petition or case*
3. *The measures referred to in paragraphs 1 and 2 above may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members.*

4. *The Commission shall consider the gravity and urgency of the situation, its context and the imminence of the harm in question when deciding whether to request that a State adopt precautionary measures. The Commission shall also take into account:*
  - a. *whether the situation of risk has been brought to the attention of the pertinent authorities or the reasons why it might not have been possible to do so;*
  - b. *the individual identification of the potential beneficiaries of the precautionary measures or the identification of the group to which they belong; and*
  - c. *the express consent of the potential beneficiaries whenever the request is filed before the Commission by a third party unless the absence of consent is duly justified.*

## CASE STUDY:

### Jamaica 2003 - Michael Roberts' Case

There was a complaint from the proposed guardian of the child, that the six year-old child showed symptoms of having been severely sexually abused while in Jamaica's childcare and protection system. The proposed care-giver had temporary custody of the child in a bid to see whether or not she would be allowed to adopt the child. During the little time she had the child she observed the six year old engaging in certain sexual acts including:

- A. inappropriate touching, kissing, sexual in nature
- B. Tricks and coerces children into engaging in sexual acts
- C. Is caught numerous times having intercourse with dogs
- D. Excessive masturbation (15 – 20 times a day)

The proposed caregiver made complaints to the Jamaican authorities who responded by taking full custody of the child. She asked to be updated on whether he was getting the appropriate counselling, and being unhappy with the non-responsive answers she sought the assistance of the IACHR to compel the state to respond. She made a request for a precautionary measure.

*'On September 22, 2003, the Commission granted precautionary measures on behalf of the seven-year-old child known for the purposes of the proceeding as "Michael Roberts" and whose real name will be kept under seal to protect his identity. The information available indicates that Michael Roberts has been a victim of sexual abuse while at children's homes under the Department of Children and Family Services of Jamaica's Ministry of Health, and that even after the abuse was detected, he was the victim of omissions and negligence for lack of adequate treatment. The diagnosis in the record indicates that Michael Roberts suffers from post-traumatic stress disorder and that the absence of adequate medical treatment tends to give rise to behavior such as sexual aggression directed at other children. After completing a preliminary stage in which it sought information from the State on the child's condition, and in view of the risk to his health, the Commission asked the Jamaican State to adopt the measures needed to protect the physical, psychological, and moral health of Michael Roberts, including specialized medical treatment. In response the State indicated that the beneficiary was receiving specialized medical treatment and asked that the precautionary measures be lifted. On November 17, 2003, the Commission reaffirmed the precautionary measures and requested additional information on the medical condition of the beneficiary, and the treatment he was receiving.'*

## Hearings

Hearings are helpful since they allow the IACHR to 'observe the general situation of human rights in the Member States and publishes, when it deems appropriate, reports on the situation in a given Member State.'

IACHR hearing can be held either in private or in public. Public hearing brings international attention to many thematic issues. Civil Society actors and government can request thematic hearings. The request for a thematic hearing can be made by simply writing a letter to the IACHR through its online system. This is normally done at least fifty (50) days before the beginning of the Commission session. A request must include the purpose of the hearing and the names of the proposed civil society witnesses and experts, as well as a point of contact.

The purpose of the hearing could be to present issues before an international body. The presentation of the issues could very well ensure that they are addressed by the state party. The state party is normally present at these hearings. The State party is invited to present information on behalf of the state. This is often a very useful process for getting state parties to address long standing problems. The IACHR will also be aware of the relevant issue and may also on its own initiative conduct further activities including a country visit which can assist in remedying the problem.

## CONCLUSION

Victims of rights violation and civil society organisations can seek assistance from various international bodies to address these breaches. The IACHR can be contacted to seek either (1) precautionary measure, (2) to file a petition, (3) for a hearing. As displayed above, these tools have been used to good effect to address rights violation. Civil Society Organisation can also take special notes of the various international bodies which monitors adherence to various treaties. CSO can share their properly databases with these bodies to demonstrate areas of rights violation that need special attention from state actors.

## ACTIVITY

Advise Mary Strokes on the different international bodies to which complaints can be made.

# REFERENCES AND MATERIALS CONSULTED

## A. DOMESTIC LAWS AND POLICIES

1. Constitution of Jamaica, 1962
2. The Charter of Fundamental Rights and Freedom Act, 2011
3. The Dangerous Drugs Act, 1948
4. The Bail Act, 2000
5. The Public Defender Act, 2000
6. The Disabilities Act, 2014
7. Offences against the Person Act
8. Sexual Offences Act, 2011
9. Town and Communities Act, 1843

## B. POLICY AND WEBSITES

1. National HIV AIDS Policy
2. Revised National HIV Policy 2014
3. Jamaica National Policy for Gender Equality, 2011
4. Green Paper on National Workplace policy on HIV/AIDS
5. Advocacy before the Inter-American System: Manual for Attorneys and Advocates (2014)
6. <http://www.oas.org/en/iachr/>
7. <http://www.oas.org/es/cidh/>
8. <http://supremecourt.gov.jm/>
9. <https://www.jcpc.uk/decided-cases/>
10. <http://courtofappeal.gov.jm/>

# NOTES

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# NOTES

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**CARIBBEAN VULNERABLE  
COMMUNITIES COALITION**

1D-1E Braemar Avenue,  
New Kingston, Saint Andrew,  
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**1 876 631-7299**



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