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公民权利和政治权利，包括以下问题：
失踪和即审即决

法外处决、即审即决或任意处决

特别报告员阿斯玛·贾汉吉尔女士
根据人权委员会第 2003/53 号决议提交的报告

增 编

对牙买加的访问 *

* 本访问报告的内容提要以所有正式语文分发，报告本身载于内容提要的附件，只以原文分发。

内容提要

应牙买加政府的邀请，法外处决、即审即决或任意处决问题特别报告员阿斯玛·贾汉吉尔于 2003 年 2 月 17 日至 27 日对该国进行了访问。这次访问的起因是：多年来一直有报告声称，牙买加的治安部队和警察部队实施法外处决；同时也收到信息，说是在判处极刑的保障设施和限制规定方面，牙买加违反了有关的国际标准。*

贾汉吉尔女士在访问期间会晤了政府部长和其他官员，其中包括警方、治安部队及司法机构的代表。她还会见了一些公民社会组织和社区的代表。她访问了金斯敦市中心(所谓“内城”)的几条街道以及西班牙城中的凯瑟琳监狱。她还访问了蒙特哥贝。她在不同的场合会见了个别证人以及据称法外处决受害者的家属。

特别报告员在访问之后的明确印象是：牙买加警方(在极少数情况下可能还有牙买加国防军)确实实施了法外处决。她强调说，她的任务并非就个别人士的有罪或是无罪作出明确的裁决；这个问题最终必须通过适当的法律程序予以裁定。她还指出，目前牙买加的刑事司法制度没有适当审理这些案件的能力。

特别报告员确认了治安部队在控制犯罪和暴力方面面临的挑战，但是她强调指出，政府部门不能以高犯罪率为借口滥用武力。她了解到，牙买加的高层决策者和治安部队高级军官均已承认，治安部队必须更好地执行问责制。

除其他外，特别报告员建议牙买加政府采取措施简化刑事司法制度，确实做到严格执法，确保治安部队在执行问责制方面达到可以接受的水平。

政府各级部门应当确实作出更大努力，谴责一切形式的治安部队滥用武力的行为，不应设法保护那些被控犯有法外处决罪行的人。

除非是在为保护生命而不得已的情况下，否则应坚决禁止执法官员使用致命武力。在非得使用致命武力时，应以绝对必要为限。执法官员必须接受有关遵守国际标准的培训。

* 在这一方面，特别报告员要求纠正她于 2002 年提交人权委员会的报告中(E/CN.4/2002/74, 第 57 段)的一处错误，当时她说已向牙买加政府转交了 16 份有关侵犯行使言论自由权利人士的生命权的指控。准确数字应为 1 份指控。

独立的警察失职审查委员会应该获得更好的资源，监察所有的警察杀人事件，并且公布有关这类案件的讯问、调查及审讯的结果。

不得判处未成年人或精神病患者极刑。应该开展调查，以确保遵守有关判处极刑的国际保障措施和限制规定。为确保有关准则和保障措施的执行，司法部门应熟练掌握之。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL,
SUMMARY OR ARBITRARY EXECUTION, ASMA JAHANGIR,
ON HER MISSION TO JAMAICA (17-27 February 2003)**

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List of acronyms

BSI	Bureau of Special Investigations
CMU	Crime Management Unit
DPP	Director of Public Prosecutions
JCF	Jamaica Constabulary Force
JCPC	Judicial Committee of the Privy Council
JDF	Jamaica Defence Force
JLP	Jamaica Labour Party
PNP	People's National Party
PPCA	Police Public Complaints Authority

Introduction

1. At the invitation of the Government, the Special Rapporteur on extrajudicial, summary or arbitrary executions conducted a mission to Jamaica from 17 to 27 February 2003. The visit was prompted by a number of reports over the years citing allegations of extrajudicial executions by Jamaican security and police forces.* Another element related to the issue of the death penalty, as the Special Rapporteur had received information that the international standards on safeguards and restrictions relating to the imposition of capital punishment had in some cases not been observed.

2. The Special Rapporteur initially requested a visit by letter of 17 September 2001 to the Permanent Mission of Jamaica to the United Nations Office at Geneva. Subsequently, the Special Rapporteur met on a number of occasions with the Permanent Representative of Jamaica to discuss the possibility of such a mission and possible dates. Eventually, by letter of 2 January 2003 from the Permanent Representative of Jamaica, the Special Rapporteur was informed that the Government of Jamaica would accept her visit in February 2003.

3. The present report is structured as follows: the first section contains a brief description of the programme of the visit; the second section contains general observations regarding the purpose of the visit, the international human rights legal framework as it relates to Jamaica, and a brief historical, social, political and economic overview of Jamaica; the third section contains a brief statistical overview of incidents of alleged extrajudicial executions over the past few years, summarizes a number of individual cases which the Special Rapporteur addressed during her visit and also deals specifically with the issue of capital punishment; the fourth section describes the findings of the Special Rapporteur, including steps taken by the authorities as well as problematic areas and issues identified; finally, in the fifth section, the Special Rapporteur presents her concluding remarks and recommendations. It should also be noted that the Government of Jamaica on 9 July 2003 was given the opportunity to provide factual comments to the draft report, and that it submitted three pages of comments on 27 August 2003. The Special Rapporteur appreciates the comments of the Government, and has incorporated them insofar as she deems them to be relevant or valid.

4. At the outset, the Special Rapporteur wishes to thank the Government of Jamaica for accepting her request for a visit. She remains grateful to the Government for facilitating the mission, assisting in arranging the schedule of meetings, and in general for granting her full freedom of movement and for fully respecting her mandate while carrying out this mission. She also wishes to thank all government officials who met with her, sometimes at short notice. She wishes to express her sincere gratitude to all representatives of civil society, in particular the representatives of various human rights organization with whom she met, as well as members of political parties and members of the legal profession and the press. She wishes also to thank the

* In this regard, the Special Rapporteur would like to correct an error that appeared in her 2002 report to the Commission on Human Rights (E/CN.4/2002/74, para. 57) stating that she had transmitted to the Government of Jamaica 16 allegations regarding violations of the right to life of persons exercising their right to freedom of expression. The correct figure was one allegation.

United Nations Country Team, and in particular the staff of the United Nations Development Programme office in Jamaica, without whom the organization of the visit would not have been possible. Above all, she wishes to thank all the individual Jamaicans she met during her visit, be they family members of victims, ordinary citizens, or inmates of St. Catherine's prison, for having spoken freely and openly with her.

I. PROGRAMME OF THE VISIT

5. During the mission the Special Rapporteur had the opportunity to meet with government ministers and officials, including representatives of the police and the judiciary. She also met with a number of civil society organizations and community representatives. She had the opportunity to visit a number of neighbourhoods in central Kingston - the so-called "inner cities". She also visited Montego Bay. On a number of occasions she met with individual witnesses and family members of persons who had allegedly been extrajudicially executed.

6. She met with the Minister for National Security, Mr. Peter D. Phillips, the Minister for Justice and Attorney-General, Mr. Adam Nicholson, the Minister of State in the Ministry for Foreign Affairs, Mr. Delano Franklyn, the Director of Public Prosecutions (DPP), Mr. Kent Pantry, and the Commissioner of Police, Mr. Francis Forbes. She also had a meeting with the Chief Justice of the Supreme Court, Mr. Lensley Wolfe, as well as with the Chief of Staff of the Jamaica Defence Force, Rear Admiral Hardley Lewin. She also met with a number of officials of the Jamaica Constabulary Force, including officials from the Bureau of Special Investigations (BSI), the Office of Professional Responsibility, the Crime Management Unit (CMU), as well as officials from the Area 1 Police Headquarters in Montego Bay. She also had meetings with officials of the Forensic Laboratory, as well as one meeting with the Senior Government Pathologist. She undertook a visit to the St. Catherine District Prison in Spanish Town where she met with prison officials as well as with a number of inmates, including inmates on death row. She also had a meeting with the independent Police Public Complaints Authority (PPCA), as well as the Public Defender, Mr. Howard Hamilton.

7. The Special Rapporteur also met with representatives of political parties in opposition, including the Leader of the Opposition, Mr. Edward Seaga of the Jamaica Labour Party, as well as representatives of the United Peoples Party and the National Democratic Movement.

8. She met with a number of civil society organizations, including representatives of the Independent Jamaican Council for Human Rights, Jamaicans for Justice, Families Against State Terrorism, the Inner City Development Centre of the Jamaican Chamber of Commerce, the Peace and Justice Centre in Montego Bay, as well as representatives of the Rastafarian Movement. She also had the opportunity to meet with Monsignor Richard Albert, as well as the President of the Jamaican Bar Association, Ms. Hilary Phillips. She also met with editors and journalists of the following local newspapers: *The Jamaica Gleaner*, *The Observer* and *The Sunday Herald*. In addition, she had a number of meetings with the United Nations Resident Coordinator, Ms. Gillian Lindsay-Nanton, as well as other representatives and staff of United Nations agencies and offices present in Jamaica. She also met with representatives of the European Commission delegation, as well as the Department for International Development of the United Kingdom.

II. GENERAL OBSERVATIONS

A. Purpose of the visit

9. Since her appointment in 1998, the Special Rapporteur has consistently expressed her concern about the number of reports she receives alleging extrajudicial executions by security and police forces. She has consistently underlined the responsibility of Governments in ensuring that such killings do not take place. For example, in her report to the Commission in 2000 (E/CN.4/2000/3), the Special Rapporteur noted in paragraph 102 that “Governments should ensure that their police and security personnel receive thorough human rights training, particularly in regard to restrictions on the use of force and firearms in the discharge of their duties. This training should include the teaching of methods of crowd control without resorting to lethal force. All cases of excessive use of force by State agents should be thoroughly investigated and persons responsible for such abuses brought to justice.”

10. Over the years the Special Rapporteur had been made aware of a number of concerns with regard to allegations of excessive use of force on the part of Jamaican security and police forces, resulting in extrajudicial killings. She addressed a number of urgent appeals and letters of allegation to the Government seeking to clarify these allegations. In April 2001 Amnesty International issued a report entitled “Jamaica - Killings and Violence by Police: How many more victims?”, expressing serious concern with regard to issues directly relevant to the mandate of the Special Rapporteur. The United Nations Human Rights Committee had also expressed concern about this situation (see next section).

11. Based on this, in September 2001 the Special Rapporteur requested the Government of Jamaica to allow her to undertake a visit to the country in order to examine the situation in situ and thereby reach a better understanding of the situation in relation to her mandate and, if needed, to assist the Government in identifying solutions to any problems it might have in that regard. As always, the Special Rapporteur sought this visit in a positive spirit of cooperation and dialogue. It should also be noted that the Special Rapporteur is bound by her mandate to specifically address human rights concerns with regard to extrajudicial, summary or arbitrary detention. The present report therefore has a specific focus on these issues and will not address other possible human rights concerns in Jamaica.

B. International human rights instruments to which Jamaica is a party

12. With regard to its legal obligations under international human rights law, Jamaica is a State party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Jamaica has also signed but not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In 1998 Jamaica withdrew from the Optional Protocol to the International Covenant on Civil and Political Rights. In addition, within the context of the Organization of American States, Jamaica is a State party to the American Convention on Human Rights.

13. In recent years reports submitted by Jamaica under the various instruments have been examined by four human rights treaty bodies: the Human Rights Committee (HRC), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on Economic, Social and Cultural Rights (CESCR). The Human Rights Committee regretted, in its concluding observations of 1997, “the lack of published information about the alarmingly high incidence of the use of firearms by the police and security forces” and urged the State party “to investigate all such incidents and to make available to the public the outcome of such investigations” (CCPR/C/79/Add.83, para. 16). It also expressed its concern that “not all cases of death at the hands of the police or security forces are subject to a coroner’s inquest” and emphasized that “all such deaths should be inquired into and that inquests ordered under the Coroners Act which are adjourned pending the consideration by the Department of Public Prosecutions of potential charges must be reopened if no prosecution ensues”.

14. The Committee on Economic, Social and Cultural Rights, in its concluding observations of 2001, expressed its profound concern about the widespread violence in Jamaica. In its recommendations the Committee “call[ed] upon the State party to exercise the full authority of the law and all means at its command to eradicate the scourge of violence” and “remind[ed] the State party that in undertaking measures to combat violence, respect for human dignity and protection of human rights must be ensured at all times” (E/C.12/1/Add.75, para. 27).

C. Background

15. The territory of Jamaica consists of one island in the Caribbean Sea, south of Cuba, of approximately 11,000 km². It has a total estimated population of approximately 2,680,000. Jamaica is today the largest State of the English-speaking Caribbean. In the *Human Development Report 2002*, Jamaica is ranked 86th in the Human Development Index. The country has a gross domestic product (GDP) per capita (PPP) of US\$ 3,639. In recent years economic growth has stagnated, as the economy has been weighed down by a heavy debt burden.

16. Christopher Columbus landed in Jamaica in 1494. This constituted the beginning of Spanish colonial rule and the total extermination of the indigenous population which had until then lived in relative peace. In 1670 Jamaica was officially ceded to Great Britain and a large number of settlers moved to the island. The British increased the slave trade from Africa, and it is estimated that more than 600,000 slaves were brought to Jamaica between 1700 and 1786, mainly to be traded to other destinations or to work in the sugar plantations in Jamaica. Following a great number of slave rebellions, as well as a strengthening of abolitionist tendencies in Britain, slavery was officially abolished by the Emancipation Act of 1833. Full emancipation was, however, not achieved until 1838. Subsequently, labour shortages, bankruptcies in the plantation sector and declining trade resulted in a protracted economic crisis.

17. Oppressive taxation, discriminatory acts by the courts and land-exclusion measures ultimately caused widespread unrest among the population. In October 1865 an insurrection took place at Port Morant. Imposing martial law, the Government speedily quelled the uprising and inflicted brutal reprisals. Jamaica was made a Crown Colony, thus losing a large degree of self-government which it had enjoyed since the late seventeenth century. Representative

government was partly restored in 1884. Jamaica was one of the British colonies that, on 3 January 1958, united in the Federation of the West Indies. Disagreement over the role Jamaica would play led to the break-up of the federation and on 6 August 1962, the island gained independence.

18. Independent Jamaica can be proud of its uninterrupted democratic rule since 1962. The political landscape has been dominated by the two main political parties, the People's National Party (PNP) and the Jamaica Labour Party (JLP). The JLP won the elections of April 1962 and its leader, Sir Alexander Bustamante, became Prime Minister. In 1967 he retired and was succeeded by Hugh Lawson Shearer. Elections in 1972 brought the PNP to power under Michael N. Manley, a labour leader who promised economic growth. In the Cold War context, the PNP sought a moderate alignment with the Eastern Bloc and the JLP turned more towards the West. In 1980 the PNP was defeated by the JLP, which guided the country in a more pro-West direction. Edward Seaga became Prime Minister. The PNP was returned in 1989 and the current Prime Minister, P.J. Patterson, has been in power since 1992. The last elections, in October 2002, gave the ruling PNP 34 and the JLP 26 of the 60 seats in the House of Representatives.

19. In recent years the crime rate has increased considerably in Jamaica. Situated at the centre of the Caribbean, Jamaica has been exposed to both the drug and the arms trade and often serves as a transit point for illegal shipment of these items. Violence has marked life in the so-called "inner cities", mainly in Kingston. In recent years the murder rate has been more or less constant at around 1,000 persons per year. The national police force consists of the Jamaica Constabulary Force (JCF), assisted by the Jamaica Special Constabulary Force. In response to the increase in crime, the JCF established the CMU, which operates in the entire country and is intended to address the most violent crimes. The CMU is heavily armed and is the unit of the JCF that has most often been accused of committing extrajudicial executions. In addition, the Jamaica Defence Forces (JDF) has often been called in to assist the JCF in policing violent and crime-infested neighbourhoods.

20. Recently, the high crime rate, as well as the relative high number of persons killed by the police, prompted both the Government and the opposition to establish a National Committee on Crime and Violence. It was tasked with looking into the circumstances leading to the high rate of crime and violence in the country and making recommendations to improve the situation. In June 2002, the Committee issued its final report which contained 15 recommendations. Implementation has now begun.

21. A very vibrant public debate and free media prevail in Jamaica, but civil society is still relatively weak. However, a number of sound human rights non-governmental organizations do exist and have been very vocal in recent years. The relationship between Government and these NGOs still has to mature.

III. ALLEGATIONS OF EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

A. Statistics and procedures for investigation of alleged extrajudicial executions

22. Jamaica shows an alarming number of killings by the police and security forces of civilians. The figures provided to the Special Rapporteur from various sources (including the Government) did not match each other, but were high enough for concern. Table 1 below shows the various statistics received regarding killings by the police. These figures cover different periods and therefore the ones not provided or available are simply marked "NP".

Table 1. Number of persons killed by the police

Year	Source: BSI	Source: JCF, Police Statistics Unit	Source: Ministry of National Security ^a
2003 Jan.	9 (one month)	Not given	Not given
2002	152	Not given	Not given
2001	156	Not given	137
2000	149	140	148
1999	65 (6 months)	151	140
1998	NP	145	151
1997	NP	149	145
1996	NP	148	149
1995	NP	132	148
1994	NP	100	131
1993	NP	123	NP
1992	NP	145	NP
1991	NP	156	NP

^a The number of killings attributed to the Jamaica Defence Force was provided by the Ministry of National Security. According to these figures, five killings took place in 1997, one in 2000, four in 2001 and three in 2002.

23. At the same time, it should also be noted that police officers are also killed while carrying out their duties. The statistics provided by the Government in this regard are as follows:

Table 2. Number of police officers killed in the line of duty

Year	Official figures provided by the Ministry of National Security	Jamaica Constabulary Force, Police Statistics Unit
2000	11	11
1999	5	8
1998	4	14
1997	11	13
1996	7	10
1995	3	4
1994	NP	6
1993	NP	10
1992	NP	-
1991	NP	13

24. According to information provided by the Government, from 1 July 1999 to 31 January 2003 a total of 23 police officers were charged with either murder or manslaughter in a total of 17 cases. As of February 2003, of these 23 police officers 7 had been acquitted and 6 had deserted. The cases of the remaining 10 had, at the time of writing, not been concluded (official statistics provided by the Ministry of National Security). Despite having put forward several requests, the Special Rapporteur did not receive or obtain information about any police officer or soldier who had been convicted for an extrajudicial killing.

25. The office of the DPP had no separate records of accusations of abuse of power by the police. It was unable to give an indication of the number of complaints received by it alleging extrajudicial killings. The reports of eight incidents of police killings, which occurred in January 2003, provided by the BSI, showed that in three incidents the dead bodies were not identified. Investigation had not concluded in any of the eight incidents. From 1999 to January 2003, the BSI had documented 531 fatalities due to police shooting. Of these, the DPP ruled that 200 cases should be submitted to the Coroner's Court which returned 46 of them, all with the ruling that the case was not fit to go to trial.

26. The PPCA received 18 complaints in 2000/01 and 26 in 2001/02 of killings by the police. In its report five complaints were documented. In four of them eyewitnesses made a strong case for extrajudicial killing. A mother testified that her son was shot while being held on the ground by the police. In another, several eyewitnesses alleged that the deceased was handcuffed when shot by the police. In yet another, a young man was simply shot while walking towards his aunt. The police claimed the gun was triggered off accidentally.

27. Given this relatively high rate of fatalities due to actions by the police, a number of measures have been taken in recent years to strengthen the investigative procedures with regard to this type of incident. The official procedure in the case of a fatal shooting or killing committed by a police officer can be described in outline as follows.

28. In the event of a fatal shooting or other type of killing by a staff member of the JCF, an investigation must be undertaken by the BSI. The BSI is headed by an assistant commissioner of police, who reports to the Commissioner of Police. The total staff of the BSI comprises 43, of whom 25 are investigators.

29. Once an investigation by the BSI is completed, the file is transferred to the DPP, who will either decide to go ahead with criminal charges or refer the case to the Coroner's Court, which will conduct a coroner's inquiry. This type of inquiry - which is conducted before a jury and chaired by a judge - is essentially intended to clarify whether criminal charges should be presented. The verdict of the inquiry, along with the case-file is referred back to the DPP, who must once again decide whether to continue with a prosecution or close the case.

30. In 1992 The Police Public Complaints Act was passed, which established the PPCA. The PPCA is an independent body which reports annually to the Minister of Justice and Attorney-General. It is tasked with monitoring and supervising the investigations carried out by the police with regard to killings of civilians by the police, as well as other issues and complaints presented against the police. The PPCA can also investigate cases on its own accord and submit cases for prosecution to the DPP or the Coroner's Court. The PPCA is currently staffed by a total of 15 investigators and additional administrative staff. It is headed by an executive director and overseen by a three-member board.

B. Individual cases

31. This section briefly describes a number of individual cases which the Special Rapporteur addressed during her mission. In some instances, concern had previously been communicated by the Special Rapporteur to the Government; in other instances cases are discussed for the first time. The Special Rapporteur wishes to underline that this selection of cases in no way purports to be a full picture of the situation in Jamaica.

32. **Janice Allen and her family.** On 29 May 2001 the Special Rapporteur transmitted an urgent appeal on behalf of the family of Janice Allen, a 13-year-old girl, who was reportedly shot dead by Jamaican police in April 2000. Furthermore, Janice Allen's relatives had allegedly been threatened with death by the police. Her brother was allegedly arrested and detained for over 12 hours without charge in incommunicado detention. Her sister was reportedly chased out of Hunts Bay Police Station and threatened when she attempted to locate her brother.

33. During the visit, the Government informed the Special Rapporteur that a police constable had been charged in May 2001 for the murder of Janice Allen. The case was still pending before the court. This case had also been monitored by the Police Public Complaints Authority and the investigation was also supervised by the PPCA. In May 2001 the case was referred to the DPP, who ruled that the police officer in question should be charged. During the visit, the Special Rapporteur also spoke to the mother of Janice Allen, who had sent her young daughter away from Kingston because of continued threats to her and her family for pursuing the case against the accused policeman. She was distressed at the open threats made to her even on court premises. No action was taken against those intimidating her despite complaints to the police. The threats had occurred starting in April 2000 and were continuing at the time of the visit of the Special Rapporteur in February 2003. The trial appeared to be far from conclusion despite the interest shown in this case.

34. **Richard Williams.** On 17 September 2001 the Special Rapporteur transmitted an allegation to the Government of Jamaica concerning Richard Williams - a teenager - who was reportedly apprehended, beaten and subsequently shot by police officers in Spanish Town Road, Kingston, in June 2001. His mother, who tried to come to his rescue, was allegedly also beaten and suffered injuries which required medical attention. During the visit the Special Rapporteur met with the mother of Richard Williams and visited the place where he was killed.

35. Prior to the visit, the Government had responded in 2001 that investigations had been carried out. During the visit, the Government informed the Special Rapporteur that three police officers had been charged in May 2002 in connection with the murder of Richard Williams. Another police officer had absconded/deserted when charged. It should be noted that the PPCA had conducted the investigation into the incident and, based on its findings and the forensic evidence presented, the DPP ruled in May that the officers should be charged.

36. **Michael Gayle.** The Special Rapporteur transmitted an allegation concerning the case of Michael Gayle (age 26) who reportedly died on 23 August 1999 due to injuries sustained two days earlier while attempting to pass through a police and army roadblock in Olympic Gardens, Kingston. Michael Gayle allegedly suffered a traumatic rupture of his stomach lining due to the severe beatings he was subjected to by the police officers and soldiers. It was reported that Michael Gayle suffered from mental illness.

37. During the visit, the Special Rapporteur spoke to both the mother and a brother of Michael Gayle. She was also informed by government sources that the person in charge of the JDF soldiers had been discharged from his duties. A coroner's inquest did apparently rule that the army personnel and police officers involved in the beating should be charged. However, the DPP has ruled that no one should be charged.

38. The case of Michael Gayle awoke Jamaican society to the excesses of the security forces in the inner cities. The fact that justice was not seen to be done brought greater anguish. The decision of the DPP not to charge the accused in this case was quoted as a prime example of the Director's bias in favour of police suspected of abuse and misuse of authority. Time and again, it was pointed out to the Special Rapporteur that the DPP was supposed to "prosecute" and not "protect" those accused of crimes, but the reluctance to bring charges against the police had made people lose confidence in that office. On the other hand, the DPP argued that in a number of cases the accused could not always be identified and witnesses were not forthcoming. The Special Rapporteur recognizes these difficulties, but found that these factors had to be overcome by the authorities. Even if not one single individual could be charged, cases for compensation could at least be pursued. It is not solely the responsibility of the victim's family to produce witnesses. In a number of cases heard by the Special Rapporteur, witnesses said that the investigating officer had made little effort to produce a witness and that no support was given to the accused by the office of the DPP to produce witnesses.

39. **Patrick Genius.** Eye witnesses claimed that Patrick Genius was shot with his hands in the air after police, travelling in an unmarked car, detained him on 13 December 1999 in August Town, Kingston. Patrick Genius, a 33-year-old welder, stall-holder and father of three children, was shot by police in the head at close range. Autopsy findings showed two gunshot wounds to the leg and three shots to the head - two to the back of the head. Other independent sources have concluded that the killing bore the classic hallmarks of execution, its pattern

suggesting incapacitation followed by killing, but the Special Rapporteur is in no position to verify any of the autopsy reports. However, the information she received during her visit does indicate that the police had indeed used excessive use of force. The Special Rapporteur also had the opportunity to meet the mother of Patrick Genius during her visit.

40. According to the information received by the Special Rapporteur, on 29 May 2001, a coroner's inquest jury returned a verdict that the police involved in the death of Patrick Genius should be held criminally responsible. The case was transferred to the DPP, who later decided not to press charges.

41. Subsequently, the mother of Patrick Genius, Leonie Marshall, petitioned the Supreme Court for judicial review of the decision of the DPP. On 2 May 2003 the Supreme Court declined to direct the DPP to account for his decision not to prosecute the accused police officers. The Court ruled that the DPP was neither required to give reasons for his decision nor was he under an obligation to review his decision.

42. **Basil Brown.** On 17 February 2003, during the visit of the Special Rapporteur, Basil Brown, a street vendor, was shot by a police officer on the street. During the visit, the Special Rapporteur had the opportunity to interview the daughter of Mr. Brown, Lisa Brown, as well as a witness to the incident (the name of the witness is on record with the Special Rapporteur but is omitted here). According to the witness, at approximately 11.45 a.m. on 17 February Mr. Brown was approached in the vicinity of Hope Road in Kingston by five municipal workers and a police officer. He was apparently requested to remove the cart he used as a street vendor. According to the witness, the municipal workers were allegedly trying to take the cart from Mr. Brown, who resisted. One of the municipal workers then allegedly took out a knife, while another had a baton and proceeded to hit Mr. Brown with it. Mr. Brown still refused, and then allegedly drew a machete to defend himself. The police officer then drew a gun. People in the vicinity were allegedly shouting to the police officer not to shoot, but he shot Mr. Brown in the back. Mr. Brown was then taken away by the police and the municipal workers in a white Toyota Hiace van. Lisa Brown informed the Special Rapporteur that when searching for her father she was told that he was in a morgue in Kingston, but she was denied permission to see the body. The witness made it clear that he believed that Mr. Brown could easily have been overwhelmed by those around and that the police could have apprehended him without having to resort to shooting him dead.

43. **West Kingston.** On 30 July 2001 the Special Rapporteur transmitted an allegation to the Government of Jamaica after having received reports of outbreaks of violence in Jamaica in July. It was reported that between 7 and 10 July 2001 at least 22 people were killed and at least 38 wounded by members of the security forces in Tivoli Gardens in West Kingston. During the visit, the Government provided the Special Rapporteur with a copy of a report of the Commission of Inquiry that was established following the incidents in West Kingston.

44. There has been strong criticism of the Commission of Inquiry by the national press, the opposition and some members of civil society. In its conclusion the Commission found the conduct of the security forces "unexceptional" and that they had carried out their functions satisfactorily in all the circumstances. The Special Rapporteur read the report of the Commission and was struck by the decisive conclusions drawn despite the Commission's observations in some instances. For example, it found no proof that the bystanders who

were killed in the “shoot-out” between the gunmen and members of the security forces had died as a result of the action of any members of the security forces. The report then goes on to say that “assuming such proof had been made, their deaths were probably justifiable under section 14 (2) (c) of the Constitution”.

45. **Braeton 7.** On 14 March 2001 police officers from the CMU and the St. Catherine South Division approached a small house in Braeton, a suburb of Kingston. A short time later, seven youths had been shot dead: Reagon Beckford, aged 15, Lancebert Clark, 19, Christopher Grant, 17, Curtis Smith, 20, Andre Virgo, 20, Dane Reynaldo Whyte, 19, and Tamayo Wilson, 20. According to the police, officers went to arrest Christopher Grant in connection with a murder. They identified themselves as police officers, called for the door to be opened and only fired on the house after coming under heavy fire from those inside. Police say that others in the house escaped and that, after the firing subsided, they discovered the bodies of the seven young men and took them immediately to Spanish Town Public Hospital.

46. However, other accounts suggest that the seven young men and boys were extrajudicially executed by the police inside the house. Amnesty International has followed the case closely, and in March 2003 a very detailed report was issued on this case which contains very strong indications that at the very least the account of the police is not correct. The case has been before the Coroner’s Court and the jury returned a split vote. The case is being prepared for transfer back to the DPP for his ruling. The Special Rapporteur understands that because of the split vote in the Coroner’s Court, the case has to be presented yet again before the court for a new ruling by another jury.

47. During the mission, the Special Rapporteur visited the house where the seven boys and young men were killed; she also spoke to people living in the neighbourhood.

48. There is no doubt in the mind of the Special Rapporteur that the police version was not correct. Oral testimonies of neighbours and the situation around the scene as well as the location of bullet holes do not appear to support the version presented by the police. An individual (name on record with the Special Rapporteur) informed the Special Rapporteur that television footage recorded by a television crew who filmed the scene soon after the shoot-out allegedly showed some of the bodies of the dead being recovered with their arms stretched over their heads in rigor mortis. Apparently this television station was later “pressured” not to broadcast this footage.

49. The Braeton 7 and other incidents show that the police apparently make no effort to preserve the scene of the incidents. Dead bodies are removed immediately and the area is not cordoned off. When the Special Rapporteur brought this up with the police officials, they explained that they carry the wounded and dead to hospitals so that they cannot be blamed for deaths resulting from a lack of immediate medical attention.

50. **Hilaire Sobers and others.** On 9 August 2001 the Special Rapporteur, jointly with the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative of the Secretary-General on human rights defenders, transmitted an urgent appeal on behalf of Hilaire Sobers, a journalist writing a weekly column on human rights in the newspaper *Jamaica Observer* and who had reportedly received a letter which contained not only a picture of a gunman raping and shooting him, but also death threats against him and two of his

colleagues, namely Mr. Perkins and Mr. Wignal. The author of the letter is allegedly a supporter of the Government, the ruling PNP, and fears were expressed that these threats were part of a broader campaign against human rights.

51. During the visit, the Special Rapporteur discussed this case with government officials. Inquiries had been made, but there was no indication whatsoever that the Government was involved. The editor of the newspaper where Mr. Sobers worked at the time confirmed to the Special Rapporteur that a letter had in fact been received, and that it was never clarified who had sent it. The Special Rapporteur was also told by members of the press that in the last two years at least 57 death threats had been received by journalists but no complaints were made to the police, and that there was no reason to believe that the authorities had anything to do with these threats.

C. Capital punishment

52. Jamaica still maintains the death penalty. The Special Rapporteur is mandated to monitor “the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment” (Commission on Human Rights resolution 2001/45). It is thus only natural that the Special Rapporteur should devote a section of her report to this issue. Although the death penalty is still in force in Jamaica, the last execution was carried out in February 1988. Currently at least 50 persons have been condemned to death by Jamaican courts and are imprisoned in the St. Catherine District Prison in Spanish Town. The Special Rapporteur visited this prison during her visit and met both with prison officials and a number of inmates on death row. She also had the opportunity to briefly assess the conditions on death row.

53. In accordance with her mandate, the Special Rapporteur intervenes where capital punishment is imposed in violation of articles 6, paragraph 2, and 15 of the International Covenant on Civil and Political Rights and its Second Optional Protocol when relevant; article 37 (a) of the Convention on the Rights of the Child; article 77, paragraph 5, and other relevant articles of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977. In addition, the Special Rapporteur is guided by various resolutions of United Nations organs and bodies.

54. In view of these guidelines and international standards, the Special Rapporteur acts where, inter alia: the crime concerned cannot be considered “most serious”, as stipulated in article 6, paragraph 2, of the International Covenant on Civil and Political Rights; the death penalty is imposed retroactively; persons are sentenced to death for crimes committed when they were less than 18 years of age; expectant or recent mothers face the death penalty; persons suffering from mental illness or handicap or those with extremely limited mental competence face the death penalty; the accused is denied his or her right to appeal or seek pardon or commutation of a death sentence; a death sentence is imposed following a trial where international standards of impartiality, competence, objectivity and independence of the judiciary were not met; the legal system does not conform to minimum fair trial standards.

55. In the context of Jamaica, it is important to note that the Judicial Committee of the Privy Council (JCPC), which sits in the United Kingdom, is the final court of appeal in the current legal system in Jamaica. The JCPC has played an active role in reviewing individual death penalty convictions and ensuring that basic human rights standards have been met. In

Pratt and Morgan the JCPC ruled in 1993 that executing a person who has spent a prolonged period - in practice more than five years - under sentence of death violates the constitutional prohibition of inhuman or degrading punishment or treatment, and sentences have consequently been commuted to a term of imprisonment. The *Pratt and Morgan* ruling was one of the reasons that prompted Jamaica to withdraw from the Optional Protocol to the International Covenant on Civil and Political Rights, the first country ever to do so. Under the Optional Protocol individuals can only petition the Human Rights Committee once all domestic appeal procedures have been exhausted. In practice, it takes from one to two years for the Committee to review a case. This would mean that in many instances cases would qualify for commutation of the death sentence under the JCPC ruling even if the Human Rights Committee cannot pronounce itself on the death penalty per se.

56. In this regard, the Special Rapporteur was concerned when she met a number of inmates on death row who claimed that they had already spent more than five years there, and that their appeal to the Privy Council was apparently being blocked by delaying the process in the domestic courts.

57. Furthermore, the Special Rapporteur was concerned to find that two inmates, Dean Nelson and Donovan Clarke, had been sentenced to death for crimes they had allegedly committed before reaching the age of 18. This was brought to the attention of the authorities who promised to investigate the matter. The Special Rapporteur was assured that the Government was committed to observing the safeguards and restrictions on the death penalty in regard to minors.

58. A number of inmates suggested that some persons had been convicted despite being mentally ill. The Special Rapporteur saw two persons who appeared to be mentally ill but she could obviously not determine whether this was in fact the case; she nevertheless remains concerned.

V. FINDINGS

59. In this section the Special Rapporteur briefly summarizes her findings following the visit to Jamaica. The section is divided into two main parts that deal with, firstly, the situation surrounding the allegations of killings of civilians by security and police forces and, secondly, with the issue of capital punishment as it relates to the mandate of the Special Rapporteur.

60. Allegations of killings by police and security forces. The Special Rapporteur categorizes her main findings firstly as operational, secondly as issues surrounding the criminal justice system and the institutional mechanisms set up to investigate such killings, and, finally, as general policy issues.

61. With regard to the operational aspect, during her mission the Special Rapporteur found ample indications that excessive force had been used by both security and police forces. The killing of the Braeton 7 is a case in point. The Special Rapporteur is aware that the police operate in a hostile and violent environment and that they do need to defend themselves against attacks. However, there are too many incidents where the police are reported to use unnecessary violence which often results in the death of suspects, or even of innocent people. Furthermore, the fact that criminals might employ violent and irresponsible methods does not justify the police

acting in a similar manner. The Special Rapporteur regrets that in some incidents the security forces, in particular the CMU, appeared to have used direct, deliberate and excessive use of force without any provocation, resulting in the death of individuals.

62. This apparent excessive use of force seems to be connected to both a lack of sufficient training and also a certain organizational culture, in particular within the Jamaica Constabulary Force. As many observers have pointed out, the JCF was originally set up by the colonial rulers apparently to protect them from attacks by the local population. In this sense, the role of the police as defender and protector of all citizens' rights seems to be only weakly rooted in Jamaican society today. The JCF is presently in the process of actively pursuing the retraining of its staff, but so far this appears to have had little effect.

63. Furthermore, as noted by several other commentators, the specific types of weaponry used by the JCF seem to be completely inappropriate in many situations. While the Special Rapporteur was informed that high-powered weapons had been confiscated by the police during raids and that the police were apparently often confronted with heavy armed resistance, she nevertheless finds that the many instances of excessive use of firepower by the police seem to have contributed to deaths which could otherwise have been avoided. In this sense, it is encouraging to note that, according to the Commissioner of Police, the procurement of less lethal items, such as tear-gas, is being undertaken.

64. Another element appears to be a weakness in the command and hierarchical structure within the JCF itself. The Special Rapporteur found that most senior officials within the JCF were quite aware that there was a problem with regard to incidents of excessive use of force on the part of police officers, and that this had to be dealt with expeditiously. However, it is the impression of the Special Rapporteur that in the lower ranks there was still a reluctance to accept the fact that some issues had to be addressed. She sometimes heard mild justification for extrajudicial killings of "criminals", especially where the legal system had failed to be a "deterrent" to them.

65. Some sources also claimed that a number of killings by the police were due to corruption within the JCF and the involvement of some police officers with criminal elements. The Minister of National Security expressed concern about the possibility of corruption in the police force in relation to the involvement of some police officers in criminal activities such as bribery, drug smuggling and extortion. However, the Special Rapporteur did not have the sufficient time to ascertain the accuracy of these claims.

66. With regard to the forensic capacity in Jamaica, the Special Rapporteur noted one main concern in particular during her visit to the Forensic Laboratory. While most of the various sections in the Forensic Laboratory are staffed by civilians, the Ballistics section was staffed almost exclusively by police officers with expertise in this area. While this would normally not be a concern in most murder cases, the Special Rapporteur is concerned that the possibility, or at least the suspicion, of bias cannot be excluded when a shooting by police is being investigated. This can be detrimental to the perception of the police in the society in general.

67. With regard to the Pathology department, a serious lack of transparency was certainly noted. Families of victims showed little confidence in the department and had serious doubts regarding its capacity and integrity. However, the Special Rapporteur had no way of properly

ascertaining this, as she was not allowed to see files which were confidential. The Senior Pathologist was very uncommunicative when he met with the Special Rapporteur. He was very reluctant to cooperate, and complained against NGOs which he alleged were interfering in his work. There was indeed great unhappiness about his style of work. After the Special Rapporteur's visit, she learned that the Government had apparently dismissed him.

68. With regard to the JDF, the Special Rapporteur notes that according to the statistics it has been involved in a very limited number of fatal incidents. Generally, the Special Rapporteur would not be in favour of the involvement of military units in policing activities, as soldiers are not trained for these types of activities. She recognizes, however, that in some instances of extreme emergency such involvement might be necessary for a brief period of time. During the visit, a draft bill was being discussed which would grant the JDF certain policing powers, such as search and detention. The Special Rapporteur would simply note that there was a shared apprehension about it. Members of the JDF argued that in reality they were involved in policing and by not giving them the legal power to operate, they were left vulnerable. Almost everyone the Special Rapporteur met other than those in the Government, was disturbed by the draft law. They saw it as an extension of the authority of the defence forces to undertake civilian duties for which they have little experience and training. There was a great deal of discussion on the proposed law in the media and amongst the civil society during the visit. Apprehensions were being expressed that the Government wished to follow a policy of encouraging the JDF to take a more active role in policing the inner city of Kingston, which could cause violence to escalate.

69. Finally, the Special Rapporteur also noted during her visit that the JCF and the JDF had recently initiated pilot activities in a number of neighbourhoods which involved community policing and more social interaction with the inhabitants of the community.

70. With regard to criminal justice system, the Special Rapporteur found that, despite a number of positive aspects, the current structural set-up relating to investigations of fatal shootings and killings by police appears to be wholly inadequate and marred by a number of institutional obstacles and by a lack of resources. Generally, the system appears to suffer from a lack of transparency, serious delays and inefficiencies, and a lack of independent checks and balances.

71. With regard to the BSI, the Special Rapporteur found that this office is apparently making an effort to face the challenges before it despite the paucity of funds. It was able to provide the Special Rapporteur with precise information that was not available at the office of the DPP. The BSI suffers from some serious inadequacies in terms of investigations into police shootings due to the failure of officers to preserve scenes of violence or crime which results in the destruction of valuable evidence.

72. With regard to the PPCA, the Special Rapporteur found that this institution does have a great potential for addressing many of the concerns about the current system. Its independence from the police would appear to ensure the required impartiality in an investigation of the police. However, this institution still remains seriously underfunded, with a serious lack of resources for conducting its own investigations. Legally, it does not have sufficiently strong powers to ensure that police officers who are requested to give a statement before the PPCA actually do so, as the current penalties for not cooperating with the PPCA are very weak. The current Police Public Complaints Act would benefit from a review and strengthening.

73. With regard to the DPP, the Special Rapporteur had serious concerns. According to the statistics made available to her by the BSI and the Government, there appeared to be serious delays in the processing of cases submitted to the DPP. As the Special Rapporteur understands it, the DPP does not have to publicly justify his decisions not to prosecute, which creates further uncertainty in the mind of the public.

74. With regard to the Coroner's Court, again the Special Rapporteur notes a number of concerns. The Coroner's Court seriously lacks resources - e.g. only one judge deals with the entire Kingston area. The facilities at the Court are also very poor. Penalties for not responding to summonses are very low. Long delays are a common concern and exhaust the complainants and the witnesses. There were complaints about the selection of jurors as well. It was reported to the Special Rapporteur that especially in cases where the police were the accused the same jurors were selected again and again. This allegation could not be confirmed as precise records were not available at the office of the Coroner's Court.

75. In general, the Special Rapporteur was very concerned about the perception of the legal system in general. Among the persons the Special Rapporteur spoke to in the inner city communities, very few were aware of the basic outline of the procedures and their options for accessing the criminal justice system. Most people expressed strong disillusionment and lack of faith in the system. Witnesses were often afraid to make official statements as they feared reprisals and lack of support from the authorities.

76. The West Kingston Commission of Enquiry (June 2002) into the incident at Tivoli Gardens (7 July 2001), where 27 persons, including one member of the JCF and another of the JDF, were killed, went out of its way to completely exonerate members of the security forces. By its own admission in paragraphs 10.12 to 10.14 of its report, no conclusion could be drawn with respect to identifying the weapons responsible for the deaths. In one case a young girl, who was lying on a bed in her room, was shot dead. An unresolved issue cannot be the subject of a definitive conclusion, as was done by the Commission.

77. With regard to the political aspect, especially at high level, the Special Rapporteur was very pleased to find generally an apparent acknowledgement of many of the problems and a willingness to address them. Concerns were shared by both the Government and the Opposition. The question remains if this "will" can be translated into action. The role of civil society in Jamaica in raising these issues and bringing them to the attention of the Government has been truly commendable. The Special Rapporteur hopes that a constructive dialogue between the two continues to develop in the future.

VI. CONCLUDING REMARKS AND RECOMMENDATIONS

A. Conclusions

78. **Although the Special Rapporteur is not mandated to conduct specific criminal investigations, it was her distinct impression during her mission to Jamaica that extrajudicial executions by the police, and possibly in a very few cases also the JDF, had in fact taken place. She does, of course, not seek to make any assertions concerning specific cases, as the guilt or innocence of an individual eventually has to be determined through a due process of law.**

79. **The Special Rapporteur fully comprehends the challenge faced by the security forces in controlling crime and violence. They face a difficult task which is compounded by the fact that they lack tactical training in the use of non-lethal force and thereby end up using disproportionately high levels of force. Such methods are habit-forming and expose both the security forces and the public to undue risks. There was a tendency, across the board, to cover up suspected cases of extrajudicial killings.**

80. **Senior policy makers and security officials recognized the need for better accountability on the part of the security forces but their message has not been fully comprehended by members of the security forces themselves.**

81. **It was the impression of the Special Rapporteur that there was a section of influential public opinion that sanctified every action by the police, regardless of its violent dimensions, on the grounds that the first priority is to wipe out crime. In their eagerness to end street violence, such persons were unwilling to support any form of accountability on the part of the police. In the same vein, they bitterly criticized NGOs who monitored violations of human rights committed by the security forces.**

82. **There was a strong belief amongst those living in the inner cities that the security forces were encouraged to abuse them and that the security forces could do so with impunity. That there was “uptown” and “downtown” justice was perpetually repeated to drive home the idea that there were two different systems of justice: one for the privileged and affluent who live “uptown” and who enjoyed impunity, and the other was rough justice for the socially and economically marginalized who lived “downtown” in the inner cities.**

B. Recommendations

83. **The Government must take measures to streamline the criminal justice system, so that complainants have access to all legal remedies and that justice is fully served. Such a system would ensure an acceptable level of accountability on the part of the security forces. The Special Rapporteur strongly suggested that:**

(a) **A procedure whereby the decision of the DPP not to send a case to trial can be reviewed should be put in place;**

(b) **The Government should take steps to reform the Coroner’s Court;**

(c) **The method of jury selection at the Coroner’s Court should be transparent. In cases involving allegations of extrajudicial killings, members of the jury should not be asked to sit repeatedly on cases of a similar nature;**

(d) **The office of the DPP should be reoriented so that it is perceived to be serving the interests of the public.**

84. **All departments of the Government dealing with police accountability must keep separate records of killings by the security force and each case must be thoroughly investigated.**

85. **Authorities at all levels of Government should clearly make stronger efforts to condemn all forms of misuse of force by the security forces and no attempt should be made to protect those accused of extrajudicial executions.**

86. **The members of commissions of inquiry that deal with specific incidents of alleged crimes must be selected in a transparent process, be perceived to be neutral and be of the highest professional standard. Such commissions should not be seen as an alternative to a due process of law in a criminal trial. The conclusions of such commissions must be based on the evidence presented. Such commissions should not pronounce judgements concerning the guilt or otherwise of suspected persons as they do not follow the established procedures for conducting criminal trials, nor are they intended to be substitutes for trials.**

87. **Law enforcement officials should be strongly discouraged from using lethal force except when it is unavoidable in order to protect life. When lethal force is resorted to, it should be used to the minimum extent necessary under such circumstances. Law enforcement officials must be trained to observe international standards, including the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Each police station should be provided with a copy of these standards.**

88. **Training of law enforcement officials should also include:**

(a) **A range of options to be considered before lethal force is used, for example, containment and negotiation, use of tear gas, etc.;**

(b) **Training in contingency plans in case of an armed encounter (post-shooting procedures). This should include mandatory procedures for scene preservation and evidence gathering.**

89. **Following their use, all ammunition used in police weapons should be ballistically checked for comparison with spent rounds. Rounds issued to officers should be accounted for at the end of the duty period and unaccounted-for rounds should be satisfactorily explained. In addition, other procedures should be put in place to ensure that a clear audit trail is established.**

90. **The PPCA should be better resourced and its membership expanded.**

91. **The capacity of investigating agencies and officers should be enhanced, in particular in the following areas:**

(a) **Identifying of witnesses;**

(b) **Scene preservation and evidence gathering;**

(c) **Establishing the identity of the deceased.**

92. **Pathology and forensic experts should be able to report independently and transparently. They should be independent from the police. A government morgue should be set up under the pathology department.**

93. **The PPCA should undertake to monitor all incidents of police killings and publish the results of the inquiries, investigations or trials in such cases. This would add to the work of the PPCA, but would further enhance the credibility of the Authority in the eyes of both the law enforcement officials and the public.**

94. **In general, there has to be more transparency and revealing of information about cases, while ensuring that the rights of the charged police officers are protected.**

95. **Capital punishment should not be imposed on minors or the mentally ill. An investigation should be undertaken to ensure that safeguards and restrictions on the imposition of capital punishment have been observed and, for future protection of the norms and safeguards, the judiciary should be thoroughly acquainted with them.**
