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JAMAICA

CHILDREN IMPROPERLY DETAINED IN POLICE LOCKUPS

Jamaica has a facade of a juvenile justice system, but in practice, children are treated like criminals. . . . Most, if not all, no most, children that I have represented are held in lockups.

—Jamaican lawyer who represents children in Family Court, June 21, 1994

INTRODUCTION	2
DETENTION WITH ADULTS.....	4
LENGTH OF DETENTION.....	7
ABUSE IN DETENTION	10
CONDITIONS IN DETENTION	12
Halfway Tree Lockup	13
Kingston-Central Lockup.....	14
RECOMMENDATIONS	15

TEL: (212) 972-8400
FAX: (212) 972-0905

TEL: (202) 371-6592
FAX: (202) 371-0124

INTRODUCTION¹

Every day in Jamaica, children as young as ten years of age are locked in dark, overcrowded, filthy cells which they share with rodents and insects. Sometimes they are held with adults charged with serious crimes. While in the cells, the children are subjected to physical and mental abuse from police and other inmates and are often denied appropriate medical care if they are injured or ill. None of the children in the cells are able to go to school or allowed outside to play in the sun. Most children are detained in these cells in police lockups for adults because they are suspected of offenses. Other children, who are in need of care because they have been abused, neglected, abandoned or labelled "uncontrollable" by their guardians end up in police lockups because police fail to move them to more appropriate places designed for children, usually because the places are overcrowded or far away.² Some children stay only a few days, others remain in detention in nightmarish conditions for weeks and even months. Sadly, the Jamaica Constabulary Force (the police), judges, lawyers, and social workers are all aware that children, especially those from lower-income groups, are regularly held in police lockups. Although international and Jamaican human rights and legal organizations have publicly denounced these lockups as "horrifying," "unfit for animals," and "inhumane," children in Jamaica continue to be held in lockups across the island while they are awaiting determinations of their fates.

A researcher for the Human Rights Watch Children's Rights Project visited lockups and juvenile correctional institutions in the greater Kingston-St. Andrew area in June 1994 and interviewed over forty children who were in detention or living on the streets. The Commissioner of Correctional Services and the Commissioner of Police were especially cooperative and agreed to be interviewed, as did many other senior police and juvenile correctional officials.

Police routinely take children to police lockups instead of releasing them to their guardians or taking them to "places of safety," alternative residential institutions designed for young people. There is only one juvenile remand center on the island for boys and it is always overcrowded. There is no remand center for girls, so they are held in lockups unless police take them to places of safety. At the time of arrest and while detained in lockups, children are subjected to physical and sometimes mental abuse during interrogations and are beaten and/or placed in dark cells, often in solitary confinement, as methods of discipline. Children are held in appalling conditions in police cells for up to twenty-four hours a day without adequate bedding or sanitary facilities, clean water and adequate diet, proper medical care, education, recreation or any other activities. Children have little or no access to legal aid or other appropriate legal or social assistance while they are held in the lockups.

¹ This report was prepared by the Human Rights Watch Children's Rights Project in cooperation with Human Rights Watch/Americas. Michelle Morris, counsel to the Children's Rights Project, visited the island between June 19 and June 24, 1994, to investigate conditions for children in detention. With the assistance of Florizelle O'Connor, the Jamaica Council for Human Rights coordinator, and representatives of the Coalition on the Rights of the Child, Human Rights Watch was granted permission from the Commissioner of Correctional Services, the Commissioner of Police and the Minister of Local Government, Youth and Sport to visit police lockups, juvenile correctional and remand centers and places of safety. The Ministry of Local Government, Youth and Sport, and in particular the Children's Services Division, coordinated visits to places of safety and the Family Court. Judges, probation officers, social workers, lawyers, child advocates, teachers, and parents, as well as many others interested in the welfare of children in detention, were interviewed. The Acting U.S. Ambassador to Jamaica, Lacey Wright, and representatives of the U.S. Embassy's political and human rights desks were also consulted.

² Because there is no systematic method of recording the names and ages of children kept in police lockups, the Human Rights Watch Children's Rights Project was unable to learn how many children are actually in police lockups around the country. However, in the Planning Institute of Jamaica's report entitled *Economic and Social Survey 1992*, the Department of Correctional Services reported that 1889 juveniles under the age of seventeen who had been charged with criminal offenses appeared before the courts in 1992.

Moreover, seventeen-year-old (and sometimes younger) children are classified as adults and tried in adult criminal courts without the protections of the Family Court, a court established to ensure that the best interests of the child are considered. Children as young as thirteen have sometimes been treated as adults by the Jamaican criminal justice system.

Jamaica is a party to the UN Convention on the Rights of the Child (UNCRC). Because the Jamaican government ratified the Convention two years ago, it is now required to submit a report documenting its compliance with the UN Committee on the Rights of the Child. The report submitted by the Government of Jamaica in October 1993 to the United Nations Committee on the Rights of the Child fails to address any of the abuses mentioned above. The report, in Term of Reference (T. O. R.) 8.4, deals with children in conflict with the law and states:

The administration of juvenile justice in Jamaica conforms with all the safeguards set out in Article 40 of the Convention with particular reference to the safeguards in paragraphs 2(b)(i - vii) which stipulate that the child is presumed innocent until proven guilty. . . and that the matter should be determined without delay by a judicial body. (T.O.R. 8.4.1)

And in T. O. R. 8.4.3, the government asserts that:

The Juveniles Act. . . provides, inter alia, for the separation of the juvenile in police stations or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court from adult offenders; for the bail of the juvenile or his remand in a place of safety if his trial cannot be completed on his first appearance in court.

Further, the report states in T. O. R. 8.4.9 that:

Chapter III of the Constitution of Jamaica lists among its Fundamental Rights and Freedoms that "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment." This right is fully observed in the official treatment of children in conflict with the law and neither capital punishment nor life imprisonment without possibility of release is imposed for offenses committed by persons below eighteen years of age.

Human Rights Watch has concluded that children are regularly arrested and detained for lengthy periods in police lockups whose conditions are deplorable and where children are physically and mentally abused in violation of Articles 37 (on protection from cruel, inhuman or degrading treatment or punishment) and 40 (on due process of the law) of the UNCRC. The detention of children in these facilities is also in contravention of other international human rights standards, as well as Jamaica's own Juveniles Act.³

While the report of the Jamaican government acknowledges that the juvenile justice system has encountered some difficulties, in particular in the Family Court, it does not mention that these limitations deny many children the due process rights of a speedy trial and the right to legal assistance guaranteed in Article 40 of the UN Convention on the Rights of the Child. In addition, the fact that the Family Court is geographically accessible to only 40% of the country's population (those who live in the Kingston area) means that over half

³ Jamaica is a party to the UN Convention on the Rights of the Child, the American Convention on Human Rights and the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Other international instruments that establish international norms for the treatment of prisoners and in particular, for children in detention, include the Standard Minimum Rules for the Treatment of Prisoners, the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). Under Jamaican law, children who are detained are protected by the Juveniles Act.

the children in the country must have their cases heard in adult criminal courts, thus making it more difficult to ensure that the rights of these children are protected.

In T. O. R. 8.4.8, the government report states that:

A Juvenile Unit was established within the Police Force to deal exclusively with matters affecting juveniles who are in breach of the law. The police officers in this unit have received special training and their activities have proved very useful in the sensitive handling of children in conflict with the law.

Human Rights Watch has concluded, however, that this program is largely ineffective in protecting the rights of children in trouble with the law — in part because the Juvenile Unit is staffed by a single individual in Kingston with extremely limited resources.

The overall picture received by Human Rights Watch/Americas and the Children's Rights Project is that the functioning of the criminal justice system in Jamaica falls far short of international standards as it concerns children. The legal safeguards concerning children are inadequate to protect young people from serious human rights abuses. The special legal and institutional provisions for the treatment of children suspected of crimes and those for other children requiring custodial care are limited in scope. In addition, for many children, the laws that protect them in theory are disregarded in practice. Children are routinely held for long periods in police cells in close proximity to adult prisoners, in disregard of Jamaican law and international standards. Children are subjected to beatings and casual brutality by police and sometimes denied medical attention. In many lockups, children are held in life-threatening squalor without adequate food, water, ventilation, bedding or sanitation.

At the same time, provisions for dealing with children suspected of crimes outside of the criminal justice system appear to be largely disregarded, and the release of children into the custody of their parents pending criminal court or Family Court hearings appears to depend in large part on the family's financial resources. Finally, even young children who are charged with capital crimes may be held indefinitely, in adult prisons, without review of their cases — sometimes for many years. The institutions within the criminal justice system that should play a leading role in the protection of children, from the police to the Family Court, appear to suffer from a lack of will to perform this function.

As a child's lawyer told the researcher for the Human Rights Watch Children's Rights Project during its visit to Family Court,

Jamaica has a facade of a juvenile justice system, but in practice, children are treated like criminals.⁴

Human Rights Watch calls on the Jamaican authorities to take steps to ensure that children in trouble with the law are given treatment that is appropriate to their ages; that the promise of protection and respect for the special needs of children that is already offered by Jamaican law and institutions be made real; and that the provisions in law and practice for the protection of the basic rights of children — not least that children in the nominal care of the state not be ill-treated or exposed to life-threatening conditions — be further developed to bring Jamaica into line with international standards.

⁴ All interviews cited in this report took place in Jamaica between June 19 and 24, 1994.

DETENTION WITH ADULTS

The principle that children should be held separately from adults is fundamental to the body of international law regarding youth detained in prisons and lockups. The United Nations Convention on the Rights of the Child says in Article 37(c) that if detained, a "child shall be separated from adults" and treated with "humanity and respect in a manner that takes into account his or her age."

The UNCRC defines a child as a person under the age of eighteen unless majority is attained earlier under a state's law. The Age of Majority Act recently changed the age of majority in Jamaica from twenty-one to eighteen.

Article 10(1)(b) of the International Covenant on Civil and Political Rights and Articles 13.4 and 26.3 of the UN Rules for the Administration of Juvenile Justice require that children suspected of offenses be separated from adults if detained. Article 10(3) of the ICCPR says "juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status." The UN Standard Minimum Rules for the Treatment of Prisoners requires in Article 85(2) that young untried prisoners be kept separate from adults and specifically requests that children be held in separate institutions. The American Convention on Human Rights states in Article 5.5 that minors in criminal proceedings should be separated from adults.

The Juveniles Act of Jamaica contains similar protections for children charged with a crime to those found in international agreements. Article 18 of the Juveniles Act places responsibility with the Commissioner of Police to ensure that children, "while detained in a police station, or while being conveyed to and from criminal court, or while waiting before or after attendance in criminal court, refrain from associating with any adult, not being a relative, who is charged with any offense other than an offense with which the juvenile is jointly charged."

Although the age of majority in Jamaica is eighteen, Article 2 of the Juveniles Act defines a juvenile as "a person under the age of seventeen." Jamaican law therefore permits the police to arrest and detain seventeen-year-olds as adults. In addition, children younger than seventeen are regularly held in police lockups, often in the same cells as adults.

In June 1994, the HRW Children's Rights Project visited police lockups, the Family Court, and juvenile remand and correctional centers in the greater Kingston-St. Andrew area. More than forty children who had been or were currently held in the lockups, as well as the Commissioner of Police, senior police and correctional officials, parents, lawyers, and child advocates were interviewed. Human Rights Watch found that children, including both those suspected of crimes and those in need of care, are routinely held with adults at some point during their detention in contravention of international and Jamaican law.

The Jamaican government's report to the UN Committee on the Rights of the Child states in T. O. R. 8.4.8 that the Juvenile Unit of the Police, under the Community Relations and Welfare division, was formed "to deal exclusively with matters affecting juveniles who are in breach of the law." This includes ensuring that children are held separately from adults and moved to places of safety as soon as possible. Unfortunately, the Juvenile Unit in Kingston is staffed by only one officer who is responsible for all children detained in police lockups. The Juvenile Unit does not have a vehicle, thus the officer told us that she must rely on telephone calls to and from police stations to learn whether children are held in lockups. She is not automatically informed of children's arrests or detentions in lockups.

Although Lt. Hya Stewart-Williamson, senior superintendent of police in charge of Community Relations, vehemently assured us that "juveniles are not, I repeat not, to be in [adult] lockups" and that she had been "appealing for years [she is in her thirty-seventh year of service with the J.C.F.] for the police to put children who are picked up for interrogation or charge in holding areas for juveniles only," Human Rights Watch learned that staff of the Community Relations office and the Juvenile Unit do not visit lockups on a regular basis. Neither unit was able to tell us how many children were detained in lockups on an annual basis, or even to give us a up-to-date figure on the numbers held at the time of our visit.

Despite the fact that Jamaican law gives police the power to make decisions about the detention of children, the Police Commissioner, Colonel Trevor McMillian, told us that "there is nothing police can do" and said that he had personally seen "nine and ten-year-olds in the lockups." He reported that he had "difficulty meeting the requirements of the Juvenile Unit" and that the police have been "dragging their heels. . . . I am not happy about it."

The researcher for the Children's Rights Project was escorted to Halfway Tree and Central lockups by the police officer in charge of the Juvenile Unit. At Halfway Tree, five children under the age of seventeen were held in one cell. The cell was located adjacent to adult cells and adult detainees roamed about in the hallway outside the juvenile cell. Keith (not his real name), told us that he was fifteen and had been held at Hunt's Bay lockup in a cell with men for three weeks before being moved to the juvenile cell at Halfway Tree.

Although the police officer conducting the tour assured us that children would not be found in the remaining parts of the lockup, four boys who told us that they were seventeen were interviewed in the cells that they shared with at least twelve adults. When we questioned the officer conducting the tour about the possibility of moving these boys to a separate cell or to the juvenile cell, the officer told us that these boys were "dangerous, hardened criminals" and that the police "always keep seventeen-year-olds with adults anyway." Two of the boys who were held with adults told us that this was the first time they had been arrested.

At Central Lockup, eight young boys ranging in age from fourteen to sixteen were held in one nine-by-five foot cell that was situated between the cells for adults. Human Rights Watch was told that the juvenile cell used to be separated from the main population and that children had been detained in a well-ventilated cell on the first floor. A police officer told us that because of the discovery of a bent bar, which police interpreted as a failed escape attempt, the boys had been moved to the adult area. While we were at Central Lockup, adult inmates were allowed to roam the hallways in the sunlight and air during the day, but children told us that they were rarely allowed out of their cell and were sometimes held inside for up to twenty-four hours at time. The officer conducting the tour of Central told us that the boys' cell was locked to protect the children from adult inmates.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in its resolution four on juvenile justice standards stated that "pre-trial detention should be used only as a last resort and that minors should be held in a facility where they are not vulnerable to the negative influences of adult detainees." Children, who are often being detained for the first time, are particularly susceptible to abuse from older, more hardened prisoners.

Human Rights Watch has concluded that the detention of children at adult lockups, even in separate cells, is a violation of the UN Convention and the UN Standard Minimum Rules for the Administration of Juvenile Justice. In fact, children held in separate cells at police lockups often have fewer rights than adult

detainees. Colonel Trevor McMillian, Commissioner of Police, and other police officers at the lockups said that they were unable to allow children in lockups out of their cells because of the danger of mixing them with adult prisoners.

One young boy detained at Central who told us that he was a first offender stated:

I was with the big men downstairs for seven nights. They treat me bad, miss. They lick me up because I'm smaller. I just lied there and couldn't sleep at night. . . . We are juveniles and we must get better treatment than the big men.

The HRW Children's Rights Project also interviewed boys and girls who were held in twelve-by-ten foot holding cells with barred doors at the Family Court in Kingston. On the day of our visit, five young girls between the ages of nine and sixteen who told us that they were in custody because they were "in need of care and protection" were held with an adult woman. The woman was shouting and hurling obscenities at the children while we were present.

In the boys' holding cell, we interviewed two young boys and two men. The youngest boy, who said he was ten, told us that he was "in need of care and protection." The other boy, who said that he was sixteen, told us that he had been held for forty-two days in Halfway Tree Lockup, sometimes with adults. The two men locked in the Family Court holding cell with the boys were reportedly charged with murder and theft, respectively. These men were charged with violations committed against their wives and children, thus had to appear in Family Court.

Children whose cases were being heard in adult criminal courts told us that they were held with adult prisoners in the court holding cells while waiting for the court to call their cases. They said they were transported to and from court in police vehicles with adults.

Attorney Valerie Nieta-Wilson told us that she has regularly seen children in lockups with adults and that in one particular case, a fourteen-year old client had been brutally attacked while held with adult prisoners:

Henry Morgan (not his real name) was only fourteen when he was arrested and charged with murder. He was kidnapped by some older boys after he witnessed a murder. The boy escaped and was arrested when he went to the police to reveal the killers' hideout. I have been representing him for four years now While he was held at a police lockup, he told me that he was bugged by adult inmates and was afraid to sleep so he stayed up all night with his knees hugged tightly to his chest. I mentioned this in my affidavits to court, but the judge refused to release Henry on bail or move him to a juvenile remand center or place of safety. He is now held at General Penitentiary with adults under the Governor General's Pleasure. I fear for his sanity and his life. . . . There has been a deterioration of his entire personality because of his being held with adults.

In 1994, the United States State Department's *Country Reports on Human Rights Practices in 1993* reported that in Jamaica "between 80-100 persons are currently awaiting trial, 'at the pleasure of the Governor General,' usually for capital offenses committed as minors."⁵ The Governor General's Pleasure (GGP) is used

⁵ *Country Reports on Human Rights Practices For 1993*, p. 485 (1992).

to detain indefinitely youth charged with murder because Jamaican law prohibits the state from sentencing children under eighteen to life imprisonment or the death penalty. Jamaica Council for Human Rights Coordinator Florizelle O'Connor told us that the "system just forgets about them" and that she had seen inmates held for twenty and thirty years under the GGP. The Commissioner of Correctional Services, Colonel John Prescod, was unable to tell us how many prisoners under the age of eighteen are currently detained under the GGP.

Human Rights Watch has concluded that the detention of children with adults in lockups and in prisons is in violation of international human rights agreements and urges the Jamaican government to remove without delay children from police lockups and prisons where adults are held. In addition, detention of children for indefinite periods in adult prisons without the possibility of review under the GGP violates guarantees against criminal punishment for acts for which criminal responsibility has not been established through a prompt and fair trial, and acts that were not clearly established by law as an offense at the time they were committed. Human Rights Watch urges the Jamaican government to review the cases of all children held under the Governor General's Pleasure immediately.

LENGTH OF DETENTION

Human Rights Watch has found that Jamaican children are held for weeks and even months in police lockups without access to legal aid or without prompt decisions about their cases in violation of international standards. One of the primary reasons why children are detained for long periods is that the responsibility for the care of children in detention is dispersed among a number of government agencies. The Police and the Department of Correctional Services, under the Ministry of National Security and Justice, share the responsibility of caring for children when they are arrested and detained in police lockups and remand centers and after they are sentenced. The Ministry of Local Government, Youth and Sport is required to protect the rights of children when they appear in Family Court and to ensure that children who are detained while waiting for their trials are held in places of safety or juvenile remand centers.

Representatives of these agencies told us that children are detained in police lockups when the police fail to transfer children from lockups to places of safety and juvenile correctional and remand centers. Police told the HRW Children's Rights Project that they are forced to hold children in lockups because the places of safety and remand center are overcrowded and geographically inconvenient and that they are unable to release children until a court orders children's removals from the lockups. The failure of any one agency to take full responsibility causes children to remain incarcerated in horrific conditions without the right to legal aid well beyond the ninety day "disposal" period prescribed by Jamaican law and in contravention of the UN Convention on the Rights of the Child.

Article 37(b) of the UNCRC states that "no child shall be deprived of liberty unlawfully or arbitrarily." International law mandates that arrest, detention and imprisonment of children should be used only as a measure of last resort and "for the shortest appropriate period of time." The UNCRC's concern for children who are detained is expressed in Article 40 that requires states to "respect a child's dignity."

The Beijing Rules (Article 10.2) and the ICCPR (Article 9.3) also require that children in detention be brought before a judge or other adjudicative body without delay and that the judge consider releasing a child instead of recommending further incarceration. Article 17 of the UN Rules for the Protection of Juveniles Deprived of Liberty is even more demanding:

Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. . .when preventive detention is used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.

Jamaican law says in Article 18(1) of the Juveniles Act that "where a juvenile is apprehended and cannot be brought forthwith before a court, the officer or sub-officer of police in charge of the police station to which he is brought shall inquire into his case and may release" the child to his or her own recognizance or to his or her parent or guardian, with or without bail, unless the officer decides that the child must be held because:

(a) the charge is one of homicide or other grave crime; (b) it is necessary in his or her interest to remove him or her from association with any reputed criminal or prostitute; or (c) the officer or sub-officer has reason to believe that his or her release would defeat the ends of justice.

Article 18(2) states that when a child is not released under section 18(1), he or she must be held in a place of safety. Article 18(2) of the Juveniles Act does allow a child to be held in a prison or adult facility if he or she is of "so unruly a character that he (or she) cannot be safely detained or so depraved a character that he is not a fit person to be detained [in a designated place for juveniles]."

Although the police have the legal authority to release a child immediately, Human Rights Watch concluded that officers often fail to do so. In fact, one police officer at Halfway Tree told us that although children should not be held at lockups, "we have to keep juveniles here unless the court orders us to remove them." Under Jamaican law, a judge also has the authority to release a child to his or her parents or guardian with or without bail, or to order his or her removal to a place of safety. Unfortunately, the senior probation officer at Family Court told us that this rarely occurs and that children are remanded over and over again, forcing children's very long stays in lockups.

While a child's case is supposed to be decided within ninety days by the Family Court, the senior probation officer at Family Court told us that due to overworked probation officers and overcrowded court dockets, children may await trial for longer periods. Thirteen boys whom we interviewed at two police lockups said they had been held for periods ranging from four days to more than five months in police lockups and had appeared before a judge in court from one to six times. One lawyer who asked not to be named told us that she could not "think of one judge who has shown understanding of the particular circumstances of children."

A particularly disturbing case occurred while we were visiting the Family Court. We interviewed a sixteen-year-old, Thomas (not his real name), in the holding cells while he was awaiting his hearing. He and his mother told us that he was a first offender and that he had been held for forty-two days in a police lockup.

While the judge granted Thomas bail, he put back the trial until early September, more than three months away. Two days later, while visiting the Halfway Tree Lockup, we found Thomas back in the police lockup, clutching the Human Rights Watch card we had given him at Family Court. He told us:

I have been held for forty-four days now. My mother was unable to afford bail because she had to pay the lawyer's fee. This is my first offense and I did not do it. I want to go home.

We also interviewed the boy's lawyer after the trial. Although he did not wish to be identified, the lawyer stated that the judge had asked him not to mention the length of time Thomas had been held in the lockups in the courtroom because Human Rights Watch was present. He also told us that:

Jamaica has a facade of a juvenile justice system, but in practice, children are treated like criminals. . . . Most, if not all, no most, children that I have represented are held in lockups.

Thomas was one of only two boys that we interviewed who had lawyers or had received some type of legal aid. In interviews with more than forty children, the Children's Rights Project learned that children are held for long periods of time, and that they are remanded many times without the assistance of legal aid. Family Court representatives did not deny this fact when we questioned them. One boy held at Halfway Tree lockup told us:

The court is not trying, it just keeps putting it off and off. . . . I seen no counselor or probation officer. I don't belong here. . .it is very bad.

The length of time that children are confined in police lockups while awaiting charges violates international human rights standards and Jamaican law as mentioned above. Most of the children that we interviewed said that this was their first offense and claimed that they had been charged with relatively minor offenses. Human Rights Watch concluded that these children should be released and that their continued detention is in direct violation of international and Jamaican standards for the treatment of children.

Although the Jamaican government's report submitted to the UN Committee on the Rights of the Child states that "bail is granted or a child is moved to a place of safety if his trial cannot be completed on his first appearance in court," children told us that they are rarely granted bail.

The UN Standard Minimum Rules for the Treatment of Prisoners says in Article 93 that untried prisoners have the right to legal representation. This is reiterated in the UN Convention on the Rights of the Child in Article 40, yet only two boys interviewed by the Children's Rights Project told us that they had seen a lawyer. Legal aid is available only to Jamaicans charged with serious offenses. Nevertheless, one boy whom we interviewed who had been charged with illegal possession of a firearm, a serious offense under Jamaican law, had never spoken to a lawyer. Florizelle O'Connor, coordinator of the Jamaica Council for Human Rights, told us that most families are unable to afford private legal counsel and that the legal aid office is understaffed, underfunded and overworked.

Moving a child to a place of safety or remand center does not guarantee a speedy trial. The director of St. Andrew Juvenile Remand Center told us that there were boys at the remand center who have been held for up to two years awaiting trial.

ABUSE IN DETENTION

Human Rights Watch has concluded that children are regularly mentally and physically abused by Jamaican police in violation of the UN Convention on the Rights of the Child(UNCRC). Antonette Haughton-Cardenas, an attorney who served on the Constitutional Committee established by the Jamaican Parliament in 1993 to finalize a draft of the Fundamental Rights and Freedoms Chapter of the Constitution, told us that "police misuse the rules and often terrorize children into submission."

The UNCRC says in Article 37(c) that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." The International Covenant on Civil and Political Rights (Article 7) and the American Convention on Human Rights (Article 5) echo this sentiment.

International law has recognized the vulnerability of children who come into contact with the police and various international instruments spell out the manner in which police officers should treat children. The Beijing Rules (Article 10.3) require that "contacts between law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, to promote the wellbeing of the juvenile and to avoid harm to her or him."

The UN Rules for the Protection of Juveniles Deprived of Liberty states in Article 65 that the "carrying and use of firearms should be prohibited in any facility where juveniles are detained." It also prohibits the use of "corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile." (Article 67) The UN Standard Minimum Rules for the Treatment of Prisoners also require that police refrain from using force or punishing children in cruel manners. (Article 30 and Article 54.1)

The Beijing Rules (Article 12.1) require that in order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime be "specially instructed and trained and that in large cities, special police units should be established for that purpose."

Chapter III of the Jamaican Constitution states that no one should receive cruel or unusual punishment. The government report to the UN Committee on the Rights of the Child states specifically that "this right is fully observed in the official treatment of children in conflict with the law."

In spite of these protections, Human Rights Watch found that children have frequently been physically and mentally abused by police in Jamaica. Children, child advocates and lawyers related numerous accounts of beatings and psychological ill-treatment by police. These abuses have occurred at the point of arrest and while children are in detention. Children reported to us that they had been beaten with batons and guns, boxed with fists, punched and verbally threatened by police. Children injured by police or otherwise suffering ill-health also appear to be denied prompt medical attention in police lockups.

Attorney Valerie Nieta-Wilson told us that she had intervened at Kingston-Central Lockup last year when she saw police officers beating a fifteen-year-old girl who had been left at the police station by her mother because she was "uncontrollable." Mrs. Nieta-Wilson told us:

I spoke to the judge personally, but he said there was nowhere else to keep her. I then wrote a letter to the newspapers about the lockups. . . . There is really no rule about the lockups.

Iris Soutar, executive director of the Coalition on the Rights of the Child, told us that a deaf boy had been shot by the police because he was unable to hear their warning to stop. She said that the boy had allegedly missed his bus home and was walking down the road when police shot him from behind.

Three boys held at Kingston-Central Lockup who had been arrested at the same time told us that they had been beaten by four police officers when they were picked up. One of the boys, who said that he suffers from severe asthma, said:

Police licked [beat] me when I was arrested. I asked to see a doctor, but they won't let me. My chest hurts and I am wheezing.

Another boy who told us that he was sixteen and that this was his first offense stated:

The police licked me with a baton for going out of the cell. When I was arrested, the police asked me for information. I said "I don't know," and they boxed me with their fists.

A boy at Central showed us a split lip that was swollen to twice its normal size. He said that police hit him in the face when he was arrested four days prior to his conversation with us.

Dudley (not his real name) was interviewed in his cell at Central lockup. He told us that he was sixteen and that he was very ill.

I is bad, bad, bad. . . . I have a big lump in my belly and can't feel anything on one side. I cough up blood when I eat. . . . The police treat me like an animal and hit my head when I was arrested. . . they want me to die. I don't say nothing, though. I need water, but we are locked down all night.

Children also told us that police have abused them psychologically. Winston (not his real name) told us that when he was arrested:

[t]he police put a gun to my head and pulled the trigger, but nothing happened. I nearly dropped dead. Someone yelled to leave the kid alone and they did.

Human Rights Watch has also concluded that children who are held in police lockups are subjected to cruel, inhuman and degrading punishment by being detained in dark, poorly ventilated cells for days at time. At both Halfway Tree and Central Lockups, boys told us that they were held for hours in their cells. At Halfway Tree, the boys had stuffed paper into the two-inch high window that ran along the outer wall of the cell to keep out mosquitoes and the cell received very little light from the interior hallway through the barred door. The researcher from the HRW Children's Rights Project was allowed to stand inside and close the door of the cell at Central Lockup and was in near darkness when the door was completely shut. The only light that entered the cell came from dime-sized holes in the solid steel door and from a two-inch by two-foot window at the top of the cell.

One boy at Central Lockup told us:

We haven't been out of the cell since 4:00 yesterday. It is hot like a big oven and like hell inside. . . we asked to open the door but they don't pay us no mind.

Human Rights Watch was unable to learn how many children have been subjected to beatings, verbal assaults, and detention in dark cells and other forms of punishment by police in violation of their rights under international law. However, conversations with over forty children revealed that police often use physical and

mental forms of abuse against children in violation of the Jamaican constitution and international standards. Human Rights Watch urges the Jamaican government to order an immediate end to all ill-treatment of children and appropriate discipline, including criminal prosecution where appropriate, of any police officer or other official who is found to have abused children.

CONDITIONS IN DETENTION

Police lockups in Jamaica are grievously overcrowded, sanitation is dreadful and insect infestation is rampant. These appalling physical conditions are exacerbated by meager supplies of food and little or no access to medical care, exercise, and educational training for detainees.⁶ In April 1993, on behalf of the Jamaican National Task Force on Crime, the Hon. Mr. Justice Wolfe said in relation to lockups that:

. . . immediate steps must be taken to address the inhumane conditions. . .the heavy sheet metal doors belong to the dark ages. . .the diet fed to cell occupants [that] should be consumed only by pigs. As a society, we can not continue to debase our fellow human beings with such contempt. . . That a so-called civilized society could treat its citizens with such contempt is incomprehensible.⁷

Human Rights Watch has concluded that detained children are subjected to horrific conditions, like those described above by the Hon. Justice Wolfe, in lockups across the island in contravention of international law. Jamaica's detention of children in such conditions demonstrates a lack of respect for children's dignity and worth. The Jamaican government's detention of children fails to reinforce young people's respect for human rights as required in Article 40.1 of the UNCRC. The Wolfe Task Force on Crime requested that "conditions in penal institutions should not be used to further dehumanize the offender,"⁸ yet Human Rights Watch has concluded that the lockups have precisely this effect on children.

Article 40(b) of the UNCRC requires that the "imprisonment or detention of a child be in conformity with the law." The UN Standard Minimum Rules for the Administration of Juvenile Justice state in Article 13.3 that juveniles are entitled to all rights contained within the Standard Minimum Rules for the Treatment of Prisoners. Specifically, Article 13.5 states that all children should receive care, protection and all the necessary assistance - social, educational, vocational, psychological, medical and physical - that they require.

⁶ These violations of international human rights standards in lockups were documented in a report entitled *Prison Conditions in Jamaica* that was released in May 1990 by Americas Watch (now Human Rights Watch/Americas). A followup newsletter released by Human Rights Watch/Americas in April 1993 entitled "Human Rights in Jamaica: Death Penalty, Prison Conditions and Police Violence" reported that the situation remained unchanged.

⁷ Wolfe et. al., *Report of the National Task Force on Crime*, April 1993 (Jamaica, mimeo 1993).

⁸ Ibid, p.75.

The Standard Minimum Rules for the Treatment of Prisoners in Article 27 extends its application to children who are detained. These protections include adequate accommodation (Article 9.1), protection from overcrowding (Article 10), adequate ventilation and heating, lighting and sanitation (Articles 11, 12 and 13), clean bedding (Article 20), food of nutritional value adequate for the child's health and strength and clean drinking water (Article 20), exercise (Article 22.1) and medical care (Article 23). Under Article 77, children are entitled to education and recreation while detained.

The UN Rules for Protection of Juveniles Deprived of Liberty state in Article 31 that juveniles have the right to facilities and services that meet all the requirements of health and human dignity. Article 32 requires that a detention facility's "physical environment be designed with the rehabilitative aim of residential treatment and with due respect to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities."

The Jamaican government report to the UN Committee on the Rights of the Child ignores the inhumane conditions that children are forced to live in when they are detained in lockups. However, the police acknowledged the terrible conditions in lockups in interviews with Human Rights Watch. The officer in charge of the Juvenile Unit commented to us after visiting Halfway Tree lockup:

How can they expect us to work in those kinds of conditions? I feel sick.

The conditions under which children are detained in lockups are inhumane. The Human Rights Watch Children's Rights Project visited Halfway Tree and Central Lockups in Kingston on June 23, 1994, and interviewed more than twenty children under the age of eighteen. Children told us that the cells were often overcrowded; that they were forced to defecate into waste buckets that often overflowed in their cells; that sewage systems outside the cells were inoperative and revolting; that they slept on wet floors without any form of bedding; that insect and vermin infestation was rampant; that the food was often spoiled, served at odd times of the day and rarely sufficient; that they were not permitted to see a doctor; and that they were not provided with an opportunity to exercise, read, play or work and were hardly ever allowed outside their cells.

Our visits to the lockups uncovered the following:

Halfway Tree Lockup

Halfway Tree Lockup is situated near New Kingston in a two-story building. The stated capacity at Halfway Tree is 120 inmates, but on the day of our visit, it had risen to 167. Police told us that at times it has climbed as high as 200.

On the day of our visit, a single light illuminated the downstairs interior of the building, leaving most of the cells in almost complete darkness. Raw sewage, including urine and fecal matter, flowed through the hallways and the stench was almost unbearable. In their cells, detainees had waste buckets in which to defecate and while we were conducting our tour, men urinated out of cells directly into the hallway since the buckets were overflowing with fecal matter. Insects could be seen on the walls and floors. One adult prisoner compared the conditions at Halfway Tree to the "middle ages."

Five boys were held in one nine-by-five foot cell. A police officer told us that as many as ten boys had been held in that particular cell at a time. The cell was located on the first floor of the building and received virtually no light because the boys had stuffed paper in the thin strip of window to keep out mosquitoes. Although cells upstairs were lighter and cleaner, the police told us that the boys had to be kept in this particular cell because "it had a weak outside wall and if

we kept adult prisoners in there we would have a jail break." The cell floor slanted downward, thus the children told us that urine and fecal matter from the hallway ran directly into their sleeping area. The children tried to block the raw sewage with a piece of cardboard to no avail. There were no bunks or beds in the cell, thus the children slept side by side on the wet floor. The boys were not provided with bedding or sheets of any kind, although some of the boy's families had brought them a sheet or newspapers.

Although children burned a rope to mask the odor and to repel mosquitoes, most of them were covered with insect bites. Some boys told us that they had to ask to see a doctor, but that none had ever come.

The waste bucket was overflowing and had been placed outside the cell. Boys told us that they were rarely if ever let out of the cell to use the toilet, much less to exercise.

The children at Halfway Tree were fed the same food as the adults and all told us that it was usually spoiled and not enough. Eating utensils were not provided and children told us that they had to eat all meals with their hands in their cells. Some boys said that the food made them sick. The meals are prepared at the General Penitentiary and allegedly sit for hours in the tropical sun before they are served. Halfway Tree is allocated \$15 Jamaican dollars (approximately U.S. 50 cents) a day for food for each prisoner and police told us that the "food is small in quantity and quality."

A fifteen-year-old detained at Halfway Tree Lockup during the our visit told us that:

The food is very bad. . .we get pegbread and tea in the morning and dumplings or rice and cow skin at 4:30. At 5:30, we get some juice.⁹

Another boy at Halfway Tree told us that:

There is not enough food and we have to eat with our hands. . .the food stinks or smells, believe me. . .the orderlies don't let me out to use the toilet.

Another boy who had twelve-inch scars on his arms told us:

My mother lives abroad and I live with my granny and little sister. I would like to let them know that I'm okay, but I haven't seen them. My arms were cut when I was in a fight. . .the police came and arrested me when a stone I threw during the fight broke a window. The police took me to the hospital and got me stitched up. I was handcuffed to the bed. . .sometimes my arms hurt and I would like some pills. I haven't seen a doctor here. The food sometimes runs out. . .we have human feelings you know. I'm not a dangerous man. . . I just feel wasted.

In addition to the boys held in the separate "juvenile cell", we also saw four boys who said that they were seventeen years old held in cells with as many as twelve adult detainees at Halfway Tree. In one of the cells where a seventeen-year-old boy was held with eight men, no waste bucket was provided. The boy told us that he and the other inmates had to defecate on the cell floor if the police did not let them out to use the toilets.

⁹ Pegbread is a hard, thick piece of bread.

Kingston-Central Lockup

The sanitary conditions at Kingston-Central Lockup were not as dreadful as those at Halfway Tree, but all other conditions remained equally inadequate. The two-tier lockup had a stated capacity of 165 inmates, but there were only 125 prisoners on the day of the Human Rights Watch Children's Rights Project's visit.

Eight boys were held in a nine-by-five foot cell with slatted wooden bunk beds and a solid steel door. A tiny window provided the only lighting and ventilation for the cell. The boys told us that bug infestation was more severe in the slats of the bunks and insects were visible on the walls and bunks. The boys told us that they usually sleep on the floor because the bugs bite more when they sleep on the bunks. One boy said that:

I don't sleep at night. . .no time to sleep really because of the bugs and the heat. . .the bugs bite and the biting hurts.

As at Halfway Tree, the boys told us that they did not receive enough food or clean drinking water. One boy told us that:

In the morning we get some tea and bread, at lunch, some rice and crushed bananas and at night maybe some bread. It is bad. It don't make you feel good. It is like hog's food. . .we catch water off the pipe. It is dirty, black water, but we are thirsty.

We asked another boy, who said that he was sixteen, about the conditions at Central:

It is hard here. When you eat, you vomit it right back up and the food puffs up your belly. Please call my father, he doesn't know that I am here.

The children held at Central complained to the Children's Rights Project researcher that the police refused to let them see a doctor. One boy, Joseph (not his real name) told us that he was concerned about the health of one of his cellmates, Byron (not his real name). Joseph said that:

Byron was wheezing and couldn't breathe. We yelled to the warder to open the door to let in some fresh air and get water, but no one ever came. I thought he was going to die.

Florizelle O'Connor, coordinator of the Jamaica Council for Human Rights, told us that children are detained in other lockups across the island in similar conditions. Human Rights Watch has concluded that the conditions in these lockups violate the UN Convention on the Rights of the Child, as well as other international agreements and standards. Human Rights Watch urges the Jamaican government to remove all children from police lockups immediately.

RECOMMENDATIONS

Human Rights Watch urges the Jamaican government to adopt and implement the following recommendations:

Detention with Adults:

- All children should immediately be released from lockups.
- Children should not be detained in police lockups and/or court holding cells or transported in police vehicles with adults.
- Children should not be held in adult prisons; however, if children must be held in adult prisons, they should be held in areas clearly segregated from adults and should have no contact with adult prisoners.
- Children suspected of being "uncontrollable" or in need of care and protection should never be detained in police lockups or prisons.

Arrest and Detention:

- Children should not be arbitrarily stopped or arrested by police.
- Parents should be informed promptly of their children's arrests and should be present at all judicial proceedings related to their children.
- Coercion used to force children to confess must be stopped. Any evidence obtained through coercion should be declared inadmissible against a child.
- No interrogation of a child should occur unless in the presence of an appropriate adult, such as a parent, guardian, or an attorney.
- Police, law enforcement officers, prison guards and other relevant personnel should be trained to respond to the special needs of young persons.
- Appropriate disciplinary action should be taken if police officers or other law enforcement personnel violate children's rights under the UN Convention on the Rights of the Child and the laws of Jamaica.

Length of Detention:

- Children charged with offenses should be brought before the appropriate court or tribunal without delay.
- Children should be detained only as a last resort and only for the most serious offenses, if there are no alternative ways to ensure that they will face trial. Children should be released to their parents or guardians as a first priority. Alternatives to detention of children, such as community or home-based care, close supervision, intensive care or placement with a family or in an educational setting or home, should be available.
- Children's cases should be adjudicated promptly and without delay by a competent, independent and impartial authority or judicial body.

- Children should not be held under the Governor General's Pleasure (GGP) in adult prisons. All children now held under the GGP should have their cases reviewed without delay and should be released or charged and tried without delay by a competent, impartial authority.
- The Jamaican government must keep up-to-date records of the arrest and detention of children. At a minimum, these records should include the names, date of birth, date and place of arrest, place of detention and date of release.

Abuse in Detention:

- Children should not be subjected to torture or cruel, inhuman or degrading treatment or punishment; in particular, they should not be disciplined in detention with corporal punishment, solitary confinement, confinement in a dark cell, or denial of meals. Disciplinary action, including criminal prosecution, must be taken against any government official responsible for such treatment of children.

Conditions in Detention:

- Children in detention should receive care, protection and all necessary assistance — legal, social, educational, vocational, psychological, medical and physical — that they require in view of their age and sex. Children in detention should be served nutritious meals at regularly spaced intervals, and should be provided with clean drinking water, sanitary bedding and toilet facilities, exercise prompt medical care and free legal assistance.
- Family contact should be maintained if children must be detained and children should be detained in places of safety or juvenile remand centers that are geographically accessible to their families.

* * *

This report is based on visits to police lockups and interviews conducted in Jamaica by Michelle Morris, counsel to the Human Rights Watch Children's Rights Project, in June 1994 in cooperation with Human Rights Watch/Americas. The report was written by Michelle Morris and edited by Lois Whitman, director of the Human Rights Watch Children's Project. We express our sincere gratitude to all those individuals and organizations, and especially the children, who assisted us in the preparation of this report.

Human Rights Watch Children's Project

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Watch) was established in 1981 to monitor human rights in Latin America and the Caribbean. Jose Miguel Vivanco is the director; Cynthia Arnson and Anne Manuel are associate directors; Sebastian Brett, Robin Kirk, and Gretta Tovar Siebentritt are research associates; Stephen Crandall and Vanessa Jiménez are associates. Peter D. Bell is the chair of the advisory committee and Stephen L. Kass and Marina Pinto Kaufman are vice chairs.