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**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

Nota verbal de fecha 2 de marzo de 2011 dirigida a la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos por la Misión Permanente de Jamaica

La Misión Permanente de Jamaica ante la Oficina de las Naciones Unidas y sus organismos especializados en Ginebra saluda atentamente a la Oficina del Alto Comisionado para los Derechos Humanos, a la que tiene el honor de dirigirse en relación con el informe presentado por el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes acerca de su misión a Jamaica (A/HRC/16/52/Add.3), así como en relación con el documento del Gobierno de Jamaica en el que se indican los errores de hecho y de derecho que se deslizaron en el informe presentado por primera vez el 27 de julio de 2010.

La Misión Permanente de Jamaica adjunta además un documento* en el que se hacen observaciones de fondo sobre algunas cuestiones tratadas en el informe.

La Misión Permanente de Jamaica ante la Oficina de las Naciones Unidas y sus organismos especializados en Ginebra aprovecha esta oportunidad para reiterar a la Oficina del Alto Comisionado para los Derechos Humanos las seguridades de su consideración más distinguida.

* Se reproduce en el anexo como se recibió, en el idioma en que se presentó únicamente.

Anexo

Jamaica's response to the country report of Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

The Government of Jamaica acknowledges the visit of the Special Rapporteur Mr. Manfred Nowak, which took place from 12-21 February 2010 and the report of the visit contained in document A/HRC/16/52/Add.3.

The Government welcomed this visit and fully cooperated with the Special Rapporteur. It notes that the Special Rapporteur acknowledged the full extent of the government's cooperation in paragraph 2 of the summary of his report. The Government's facilitation of this visit is a sign of its respect for the international human rights obligations Jamaica has undertaken and its readiness to subject its institutions and systems to independent evaluation.

Nevertheless, having reviewed the report of the Special Rapporteur, the Government of Jamaica regrets that it is unable to accept many of the findings and assertions therein. In particular, the government emphatically denies the allegations that any acts of torture sanctioned by the state were committed against prisoners or detainees. Similarly the sweeping statement that the conditions of detention in police stations could be described as "*reflecting a complete disregard for the human dignity of detainees*" is rejected as being an incomplete and inaccurate assessment of the situation.

The report contains internal inconsistencies and other flaws which combine to affect the accuracy of the conclusions reached. Each of these will be addressed in turn.

Recommendations of the Special Rapporteur

Paragraph 77 (a): Issue, by the highest authorities, a public condemnation of torture and ill-treatment, including excessive use of police force;

The Government of Jamaica has always regarded torture and ill treatment including the excessive use of force by any law enforcement authority as unacceptable and has publicly stated this on several occasions.¹

Paragraph 77 (b): Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, providing for regular preventive visits to all places of detention by an independent domestic monitoring body; a declaration should be made with respect to article 22 of the Convention, recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claims to be victims of a violation of the provisions of the Convention;

The issue of the ratification of the Convention against Torture and other Cruel, Inhuman Treatment or Degrading Treatment or Punishment is under review. There are provisions in the law for visits to places of detention by independent monitoring bodies and the practice is being intensified in accordance with the direction of the Chief Justice. These include visits by Resident Magistrates to police lockups.

¹ e.g. statement of Permanent Representative of Jamaica to the Organisation of American States at 40th OAS General Assembly. 7 June, 2010.

Paragraph 77(c): Re-accede to the First Optional Protocol to the International Covenant on Civil and Political Rights, providing for the right to lodge individual complaints to the Human Rights Committee;

Jamaica's withdrawal from the First Optional Protocol to the International Covenant on Civil and Political Rights was a policy decision. Citizens still have the right to make individual communications on alleged human rights violations to the Inter American Commission for Human Rights under the Inter American Convention of Human Rights and therefore the principle of citizen access to independent international review of Human Rights matters has been preserved. Jamaica is confident that the regional (IACHR) system provides a full and effective regime for addressing these rights of citizens.

Paragraph 77(d): Pay adequate compensation to all successful complainants who lodged an individual communication under the First Optional Protocol to the International Covenant on Civil and Political Rights, in accordance with the final views of the Human Rights Committee, including to Michael Freemantle;

The Government reviews the cases of all successful complainants under the First Optional Protocol to the International Covenant on Civil and Political Rights and determines on a case by case basis whether compensation will be paid. The case of Michael Freemantle was reviewed and based on the outcome of investigations by the state including certain admissions made by the complainant, it was determined that Mr. Freemantle would not be compensated.

Paragraph 77(e): Amend domestic penal law to include the crime of torture in full accordance with article 1 of the Convention against Torture, and to ensure that it is subject to adequate penalties;

There is no criminal offence of torture under Jamaican law. However there are several criminal offences which contain all the same elements of torture as defined in the Convention Against Torture for which persons can be prosecuted, all of which carry serious penalties.

Paragraph 77(f): Ensure prompt and thorough ex officio investigations for all allegations of ill-treatment or excessive use of police force by an authority that is independent from the investigation and prosecution. Any officer known to be abusive should be removed from custody duties. Heads of police stations and detention facilities should be made aware of their supervisory responsibility. In particular, the allegations documented in the appendix to the report should be thoroughly investigated and the perpetrators of torture and ill-treatment brought to justice. The forensic examinations conducted during the mission should be used as evidence in criminal trials against the perpetrators;

Allegations of ill treatment or excessive use of force by the police are investigated. The Independent Commission of Investigations (ICI) referred to in paragraph j is now functioning and has commenced investigations in several cases.

Many of the allegations documented in the appendix to the report were investigated. However, on closer examination it was discovered that many of the allegations were not well founded. The government found no perpetrator of torture or ill treatment. There was an unfortunate reliance by the Special Rapporteur primarily on the assertions of detainees in drawing conclusions. There appeared to be little attempt to ascertain if there could be any other explanation nor was there any acknowledgement that there could be issues of credibility with the complainants.

Paragraph 77 (g): Reduce, as a matter of urgent priority, the period of police custody to a time limit in line with international standards (maximum 48 hours); after this period, detainees should be either released or transferred to a remand facility under a different authority;

The maximum time period in police custody will remain. Under the Constabulary Force Act, after forty eight (48) hours a person must be taken before Resident Magistrate. However, the Constabulary Force (Interim Provisions for Arrest and Detention) Act 2010,² section 50F allows a Justice of the Peace to extend the arrest or detention of a person to seventy two (72) hours if satisfied that the arrest or detention is required in the interest of justice. After seventy two hours, the individual must be taken before a Resident Magistrate. If the person is unable to obtain bail, they will be remanded. Given the limited number of remand facilities available, if there is no room in one of these facilities, the person will be held in a police lock up until trial. It should be noted that until the trial the person will have his detention reviewed regularly at which point an application for bail can be made.

Paragraph 77 (h): Establish accessible and effective complaints mechanisms in all places of detention; complaints by detainees should be followed up by independent and thorough investigations, and complainants must be protected from reprisals;

There are accessible complaints mechanisms in places of detention. The report itself identifies cases in which detainees utilised these mechanisms e.g. paragraphs 37 of the appendix. Complaints are investigated.

Paragraph 77(i): Ensure that justices of the peace and resident magistrates conduct regular visits to all police lock-ups;

Residents Magistrates and Justices of the Peace are already mandated by law to conduct regular visits to police lockups. Plans are in place to increase the frequency of these visits.

Paragraph 77(j): Rapidly bring into force the Independent Commission of Investigation, equipped with sufficient powers and resources to investigate all forms of police misconduct, including allegations of extrajudicial killings, torture and ill-treatment;

Please see paragraph 77(f) above.

Paragraph 77(l): Ensure that persons deprived of their liberty are confined in facilities where the conditions comply with international minimum sanitary and hygienic standards and that detainees are provided with basic necessities, such as adequate floor space, bedding, food and health care; convicted prisoners should be provided with opportunities for work, education, recreation and rehabilitation activities;

The Constabulary Force Act speaks to treatment of persons arrested or detained. There are provisions for food, clothing and other articles necessary for the detainee's health or welfare. There is also the entitlement to medical treatment. Correctional facilities do have opportunities for work, education and rehabilitation activities. This is evident from interviews contained in the Appendix of the Special Rapporteur's report³ although this fact is not clearly acknowledged.

Paragraph 77 (m): Place persons with mental disabilities, and particularly those suffering from severe mental illnesses, in a specialized psychiatric institution;

Resource constraints do not allow the transfer of persons with mental illness to separate specialized institution. There is only one (1) specialized institution in the island and three (3) public hospitals with wards capable of dealing with mentally ill persons. These facilities struggle to deal with the needs of the general population and are not designed to deal with mentally ill persons who have committed crimes. The government is committed to

² This act has a built in review clause. Under section 2(1) the act is valid for one year and will cease to have effect unless extended by a resolution of both Houses of Parliament.

³ e.g. see statements in paragraphs 132, 135 and 138 of the appendix. Although there is some inconsistency in the statement in paragraph 138.

ensuring that psychiatric care is available in the existing correctional facilities and has done so through retaining the services of psychiatrists and providing medication to treat these persons.

Paragraph 77(n): Immediately close down the police lockups at May Pen and Montego bay police stations;

While the government is committed to improving facilities, none of those identified will be closed.

Article 77(o): Remove all children in conflict with the law from adult detention facilities, and ensure that children in need of care and protection from the State are not held with those in conflict with the law;

The Government has identified a facility which is being retrofitted in order to accommodate children in conflict with the law. Staff is being recruited and trained and equipment is being sourced for the facility which is scheduled to open shortly. The Child Development Agency (CDA) is working with the Jamaica Constabulary Force to ensure that children in need of care and protection are not held in adult places of detention but are transferred to children's homes.

Article 77(p): Transfer the responsibility of places of detention for juveniles to the Child development agency;

The issue of transfer of responsibility for places of detention of juveniles to the Child Development Agency is under consideration.

Paragraph 77(q): Establish clear guidelines concerning punishments at children's homes, places of safety and correctional facilities, and ensure that its use is recorded in the register;

Clear guidelines do exist concerning punishments in children's homes, places of safety and correctional facilities. The Special Rapporteur's report refers to these guidelines in *inter alia* paragraph 66 of his report.

Paragraph 77 (r): Abolish the death penalty;

The government does not regard the death penalty as inconsistent with any legal obligation which it has undertaken. As a sovereign state which faces significant challenges in dealing with major crime, it will retain the death penalty as an option to deal with these most serious crimes, which under the current law is capital murder. Any change in its position will be determined by the state in accordance with the needs of the society.

Incident at the Armadale Juvenile Correctional Centre

With respect to the incident at the Armadale Juvenile Correctional Centre dealt with at paragraphs 55 to 61 of the report, the government has accepted liability and will provide compensation to all the girls who were injured and to estates of those who died.

Allegations with respect to the Department of Correctional Services (DCS) and the Jamaica Constabulary Force (JCF)

In interviews with officials from the DCS and the JCF, the Special Rapporteur was advised that there was a shortage of space for remandees and in prisons. This led to overcrowding but the government was making efforts to deal with the situation. There are plans to build a new prison and remand centre and special facilities for juveniles. However budgetary constraints have delayed the implementation of these plans. The recent world financial crisis, from which the Caribbean region has not yet emerged, has exacerbated the situation.

The report does not reflect the fact that the government wishes to address the problem of overcrowding but is being hampered in its efforts by resources limitations. In fact, the report in several instances essentially dismisses the efforts which have been made to meet international standards.

Allegations with respect to facilities operated by the Jamaica Constabulary Force

Throughout the report the Special Rapporteur has made several references to the fact that persons have been held in lockups for periods as long as five years awaiting trial. Specific reference is made in paragraph 230 of appendix to the cases of four (4) persons who have been in custody since 2006. However, the facts of the case were not accurately represented. The report failed to note that the persons in question were in fact tried for the crime of murder in a jury trial. Jamaican law requires a unanimous verdict for the conviction of this offence. The jury failed to arrive at a verdict and a retrial was ordered. At the time they were interviewed the 4 men were therefore awaiting a **retrial** for the crime of murder. Due to the nature of the crime they were not be offered bail.

The government asserts that it does not regard a period of 4 years as excessive delay in a case where a preliminary inquiry was held, a trial for murder was completed, a decision was made to hold a new trial and the necessary procedures for this trial has to be put in place. It regrets that the Special Rapporteur did not seek to ascertain the particulars of the case before using it as a reference point for determining that persons were being held in custody for extended periods without valid reasons.

Similarly, the government recognized that there are difficulties with some cases involving minors. Sometimes they are kept in lockups because there is no space in children's facilities and it is necessary to keep the minors in a secure location. The state fully appreciates that this is not an acceptable and as noted in paragraph 77 (o) of the Recommendations, is dealing with the problem through several strategies.

The report makes certain allegations in paragraph 65 of the appendix against Superintendent Hewitt of Hunts Bay Police Station. The officer was described as *"uncooperative, aggressive and openly threatened the Special Rapporteur's team during the visit"*. The government found these allegations very disturbing and had the matter investigated. The results of these investigations revealed certain details which shed a rather different light on the matter. The investigations revealed that the Special Rapporteur and his staff attempted to bring a camera into the lock up although it was communicated to the team that this was not allowed. In addition, the person carrying the camera was not an accredited official, but the driver of the delegation who lived in the same community as some of the detainees. The community is home to one of most dangerous gangs in Kingston and St. Andrew.

The driver was therefore regarded as someone who could compromise the security of the police station and its personnel. The allegation of obstruction and rudeness by the Special Rapporteur apparently stems from the refusal of Superintendent Hewitt to allow the camera and driver on the premises and the fact that the Special Rapporteur was unprepared to accept that decision.

The government has concluded that the allegations against Superintendent Hewitt were unfounded and resulted at best from a misunderstanding or other circumstances. It regrets that the Special Rapporteur found it necessary to make allegations of such serious nature against the officer.

Department of Correctional Services

The issues raised in respect of cases in facilities operated by the Department of Corrections illustrates other instances where the Special Rapporteur used circumstances of a particular situation to draw broader conclusions without a careful balancing of the evidence of all the parties.

The manner in which the report dealt with the government's response to the issue of overcrowding and the question of rehabilitation of offenders is indicative of the approach taken with regard to several other issues.

The report does not reflect the fact that the government wishes to address the problem of overcrowding but is being hampered in its efforts by resources limitations. In fact, the report in several instances essentially dismisses the efforts which have been made to meet international standards.

An example of this is the reference to the need for correctional facilities to have educational and rehabilitation opportunities. If it is to be assumed, as the Special Rapporteur appears to, that most of the testimony of the detainees and prisoners is accurate, then at several facilities where he conducted interviews, he was told specifically that persons attended classes and had opportunities to learn skills. The provision of educational opportunities and skills training in one institution was acknowledged only to criticize the institution for another reason. Without a careful reading of the report, one would be left with the impression that no such opportunity existed in any correctional facility. It is the drawing of this kind of picture which is incomplete to which the government objects

The most significant of these conclusions relates to the disturbance at the Horizon Remand Centre. This incident is still the subject of two (2) separate investigations, one by the government and another by the Office of the Public Defender.

In noting the factors which may have led to the upheaval at the institution, the report indicated that there were complaints about a shortage of water and that water was being supplied to the institution but there were delays in the supply. The report failed to state that at the time of the Special Rapporteur's visit Jamaica was experiencing its most severe drought in almost 20 years. In order to conserve water, most residences in Kingston and St Andrew were receiving water twice per week or less and many communities had to rely on water being trucked in. Only institutions such as hospitals and prisons were guaranteed a regular supply of water by trucks and there were still limitations on the supply. This was not due to negligence or incompetence but simply to lack of availability. The specific circumstances at the time, which affected the entire society, is something which should at least have been the subject of a footnote for the sake of accuracy.

In addition the Special Rapporteur concluded in paragraph 45 of the report that based on the medical evidence "indicated that the overall pattern of injuries was assaultive and indicative of blunt force" "The medical evidence strongly corroborated the allegations of the detainees who suffered broken limbs and other defensive type injuries" **Consequently a determination was made that that severe pain was intentionally inflicted for the purpose of punishment amounting to torture.**

This conclusion ignored certain basic facts, some of which were evident from the report. The disturbance arose from a conflict between the detainees and warders. There was testimony that the detainees had armed themselves with stones and other weapons and they lit at least one fire which had to be put out by the fire department. (paragraph 30 of the appendix).

There seems to be some incoherence about whether any warders were seriously injured and the implications of this. Paragraph 45 of the appendix states that no warders were

hospitalized since they suffered only “minor injuries”. This is inconsistent with a statement in paragraph 8 of the appendix which refers to two (2) warders being severely injured. It also conflicts with a statement in paragraph 30 which indicates that one of the warders suffered an injury to his eye and was out on sick leave for 14 days. This is hardly a “minor injury”. Investigations by the government indicate that two of the warders suffered injuries to the eye,⁴ one suffered an injury to the lower back and another suffered injury to the torso.

Yet the Special Rapporteur apparently chose to disregard the testimony of the warders, the fact of their injuries and the possibility that some of the injuries identified could have been inflicted by clashes between the detainees themselves. The government regards these conclusions as lacking in balance and/or premature in the circumstances. *

In addition, the nature of injuries suffered by law enforcement personnel in the performance of their duties is a matter which should be treated with some sensitivity. {} The current approach which seems to trivialize the injuries suffered by the personnel of the correctional services is unacceptable.

The report speaks to the issue of minors not being separated from adults in two (2) detention facilities. Girls are kept in separate dorms from women at Fort Augusta Correctional Centre at night. However, during the day the dorms are opened and both groups are exposed to educational and training opportunities as noted in paragraph 69 of the appendix. The government was criticised for this in paragraph 73 of the report. However, it is not possible to provide these opportunities to both groups separately for economic reasons. While not ideal, the fact that the girls are only integrated with the women for the purposes of providing them with educational and training opportunities should have merited some acknowledgment from the Special Rapporteur.

Until the state can afford to provide a separate facility this arrangement will remain in place while making every effort to ensure the safety of both the women and the juveniles.

The report in paragraph 73 also cited the Horizon Remand Centre, as a location where juveniles were held with adults. The fact is the juveniles are totally separated from adults on different security posts.⁵ They may be located at the same main facility, but they are physically segregated from the adult inmates and remandees. The government’s view is that in the absence of funding to provide separate facilities to house juvenile offenders, the best option available is to provide accommodation in an existing facility where there is no interaction with adult detainees. This will protect the juvenile offenders while ensuring that they are kept in a secure place. It should be noted that the CDA has a mandate to monitor juveniles in custody to ensure that their rights are protected and the agency has now increased its efforts in this regards

The “corroboration” of allegations of ill treatment by medical evidence.

The Special Rapporteur’s report frequently supports the allegations by asserting that the forensic expert corroborated the allegations of ill-treatment. The government does not accept that the expert could corroborate such allegations by examining injuries that could have been caused by numerous other means. While a detailed medical examination⁶ may be able to confirm the nature of an injury and its cause, it cannot determine who caused the

⁴ The injury of one of the warders is noted in paragraph 30.

⁵ The number of juveniles held in the facility can also be limited. As at December 31, 2009 there were no female juveniles held on remand at the Horizon Remand centre and only two girls who had been sentenced for any offence. For the same period thirty two male juvenile were held on remand.

⁶ The government contends that given the circumstances and facilities available the medical expert would not have been able to conduct detailed medical examinations on many of the persons.

injury and what were the exact circumstances. An example of the shortcomings of the method used by the forensic expert can be seen at paragraph 78 of the appendix. The female complainant alleged that she was beaten by the police on June 19, 2009 but no formal complaint was ever made so the matter could not be investigated. She was examined by the forensic expert **almost 9 months later** in February 2010. Yet based solely on a physical examination he was able to conclude that there was no other credible explanation for the types, number and pattern of her injuries. In other cases the report highlighted that fights among male juveniles are frequent, therefore clearly showing injuries could occur from this situation.

The conclusion that there were acts of torture in places of detention

While denying that torture in the classical sense of deliberately inflicting severe pain or suffering as a means of extracting a confession of information was a major problem in Jamaica, the Special Rapporteur noted in paragraph 36 that at the Horizon Remand Centre, for example, persons were subjected to different degrees of beatings for the purpose of punishment which he claims can also amount to torture. The government categorically denies any allegation that it supported or acquiesced to any action which when committed by an official of the state could be regarded as an act of torture.

The conclusions of the Special Rapporteur that the alleged beatings of the detainees at the Horizon remand Centre may amount to torture should be examined in light of jurisprudence of the Committee Against Torture (CAT) as defined by article 1 of the Convention against Torture. The CAT has not issued a general comment on the interpretation of torture, including on acts which constitute torture as defined in Article 1.

The submissions in individual complaints claim that persons have suffered beatings administered by agents of the State, CAT does not in its decisions on those submissions expressly hold that beatings amount to torture. In **X v. The Netherlands, Communication No. 36/1995, U.N. Doc. CAT/C/16/D/36/1995 (1996)**, for instance, the Committee stated the following “the author has claimed that, during his first detention, he was beaten with a rope with wire in it. Although not explicitly corroborated by the medical note submitted by the author, the Committee is prepared to find that X was maltreated during his first detention in Zaire.” The Committee did not expressly determine that the beating constituted torture.

While the CAT may hold that there was evidence of torture in a particular submission, one cannot say what specific act amounted to torture given that CAT does not tend to single out a specific act from the large number of acts complained of by the petitioner.

The Special Rapporteur’s claim that beatings amounted to torture at the Horizon Remand Centre is based on his conclusion that the beatings were administered intentionally for the purpose of punishment. As noted previously he appeared to rely exclusively on the evidence of the detainees in reaching these conclusions, although statements were taken from two warders. The government has already stated that it found this approach to be unacceptable. This is more so when a conclusion is drawn that the injuries which were inflicted on the detainees could be regarded as torture. There appears to be no evidence from the facts presented by the Ministry of National Security that detainees who received injuries during the disturbance of 8th February 2010 were beaten intentionally for the purpose of punishment. The medical evidence being relied on by the Special Rapporteur in his conclusion that the defensive type injuries suggest that beatings were intentionally inflicted for the purpose of punishment would require corroboration. The SR would further be required to demonstrate that the injuries were not inflicted by the warders in self defence. It would further have to be proved in compliance with the definition of torture

under Article 1 that the injuries were not only intentionally inflicted for the purpose of punishment but also that they were inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. There is no evidence of any such consent or acquiescence.

Further, the Department of Correctional Services is investigating the matter and has indicated that where the allegations of beatings are sufficiently substantiated, then the appropriate disciplinary action would be taken. This makes clear that the beatings could not have been officially or lawfully sanctioned by the authorities, and does not, therefore, support the conclusion that authorities consented or acquiesced to any acts which could be regarded as torture. The persons responsible for inflicting such treatment would therefore have been acting outside of their lawful duties.

In conclusion, the government of Jamaica remains committed to implementing its international obligations. Accordingly, we fully support the mandates of the special procedures established by the Human Rights Council. We will respond to future requests for invitations to visit the country on a case by case basis. The government of Jamaica [is committed to maintaining the highest standard, of respect for Human Rights and will continue to give its full cooperation to the international community and treaty bodies in the protection, preservation and enhancement of human rights of its citizens.
