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COMMISSION DES DROITS DE L'HOMME  
Soixantième session  
Point 11 b) de l'ordre du jour

**DROITS CIVILS ET POLITIQUES, NOTAMMENT LES QUESTIONS  
SUIVANTES: DISPARITIONS ET EXÉCUTIONS SOMMAIRES**

**Lettre datée du 16 avril 2004, adressée au Haut-Commissaire aux droits de l'homme  
par intérim par la Mission permanente de la Jamaïque  
auprès de l'Office des Nations Unies à Genève**

Je me réfère au rapport de M<sup>me</sup> Asma Jahangir, Rapporteuse spéciale de la Commission des droits de l'homme pour les exécutions extrajudiciaires, sommaires ou arbitraires, sur la visite qu'elle a effectuée en Jamaïque en février 2003 (document E/CN.4/2004/7/Add.2).

La Jamaïque, en tant que pays concerné, a fait état de ce rapport au titre du point 11 b) de l'ordre du jour de la présente session de la Commission. Cependant, vu qu'un temps de parole de huit minutes était insuffisant pour aborder tous les sujets de préoccupation, nous joignons à la présente un texte détaillé contenant les observations de la Jamaïque sur le rapport de la Rapporteuse spéciale.

Je vous serais reconnaissant de bien vouloir faire distribuer le texte détaillé figurant en annexe\* en tant que document officiel de la soixantième session de la Commission des droits de l'homme.

L'Ambassadeur,  
Représentant permanent

(Signé) Ransford Smith

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\* L'annexe est reproduite telle quelle, uniquement dans la langue dans laquelle elle a été reçue.

Annex

**Comments by Jamaica on the Report of  
Special Rapporteur of the Commission on Human Rights on  
Extrajudicial, Summary or Arbitrary Executions,  
Ms Asma Jahangir, on her visit to Jamaica  
February 17 - 27 2003**

**Overview**

The Special Rapporteur visited Jamaica at a time of concern surrounding allegations of excess use of force by some members of the Jamaica Constabulary Force.

During her visit, the Special Rapporteur met with families who had lost relatives in encounters with members of the Jamaica Constabulary Force. The emotional atmosphere in these meetings could perhaps explain the broad use of generalizations by the Special Rapporteur in the Report.

For example, the references to the cases of Michael Gayle and Patrick Genius may be cited as instances of generalized comments made by the Special Rapporteur about the course of justice in Jamaica and the relevance of due process. These generalizations are without justification as where there is sufficient evidence to bring a matter to Court, charges are in fact laid as in the cases of Richard Williams, Janice Allen, and the Braeton 7.

The Special Rapporteur's summary (page 2, paragraph 6) states, *inter alia*,

**"Authorities at all levels of the 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"**

In her findings, (page 22, paragraph 79) the Special Rapporteur states without presenting one shred of evidence that:

**"there was a tendency across the board, to cover up suspected cases of extrajudicial killings".**

The Government of Jamaica finds this statement unacceptable.

The Government of Jamaica now recalls some of the programmes implemented in ongoing efforts to deepen respect for human rights and due process and provide accessibility to the avenues of justice:

- There is a well established witness protection programme which to date has not lost one witness.
- There is a Crime Stop programme where persons are encouraged to provide information to the police without identifying themselves.

- The Police Public Complaints Authority is an independent body headed by a retired Judge of the Supreme Court and Court of Appeal to receive and investigate complaints against the police. This Body was recently strengthened by the addition of 15 new investigators and training upgraded facilitated by international partners.
- The Bureau of Special Investigations was established to investigate police shootings. Inquiries are conducted under the supervision of the Police Public Complaints Authority.
- The Office of the Public Defender has been established to receive, investigate and provide legal assistance to citizens, including assistance in obtaining compensation for wrongs suffered.
- The Government has reformed the Legal Aid Programme providing wider assistance to indigent citizens including the filing of civil claims for compensation for wrongs suffered.
- The Ministry of Justice which has responsibility for Human Rights has implemented a rights based reform programme of laws touching on fundamental rights and freedoms resulting in more non-custodial sentencing options, including mediation; a new Bail Act which gives greater protection for employment and family rights; the establishment of Night Courts to ensure speedier trials; the simplification of the language used in Courts to ensure better comprehension on the part of citizens and a Case Management programme which involves all parties.

All these measures are grounded in the spirit and intent of the United Nations Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, the United Nations Code of Conduct for Law Enforcement Officers; and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

The Government of Jamaica is committed to ensuring that the rights of citizens are protected in keeping with its obligations under the Constitution of Jamaica as well as international agreements.

The Special Rapporteur, in paragraphs 20 and 27, acknowledges the efforts made to deal with crime. The Report notes the establishment of the National Commission on Crime which involves the participation of the Government and the Opposition.

Paragraph 27 states, *inter alia*, that: **"a number of measures have been taken in recent years to strengthen the investigative procedures with regard to this type of incident."**

However, it is felt that serious recognition of the Government's efforts was undermined by the Special Rapporteur's decision in respect of the treatment of the Government's considered responses: i.e. to incorporate them **"insofar as she deems them to be relevant or valid "** (paragraph 3).

**Specific Points:**

**Paragraphs 24 and 25:**

It is not entirely clear what the expression "abuse of power" means. The paragraph seems to contemplate only fatalities but as the Special Rapporteur would be well aware, not all abuses involve death or even serious injury. The Government of Jamaica notes that separate records are not kept for members of the security forces convicted for criminal offences.

The Office of the Director of Public Prosecutions has raw data concerning the members of the security forces convicted of criminal offences. However this data has not been disaggregated in a manner which allows for the classification of offences.

**Paragraphs 32 and 33: Janice Allen and her family**

The Special Rapporteur was advised repeatedly prior to, and during, her visit that there are no official records of complaints being received regarding alleged threats to the family and relatives of Janice Allen.

In keeping with rights guaranteed to citizens under the Constitution of Jamaica, buttressed by our acceptance of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the State established the Police Public Complaints Authority and the Bureau of Special Investigations to ensure investigation of alleged human rights violations.

The case of Janice Allen has been investigated by the Bureau of Special Investigations under the supervision of the Police Public Complaints Authority. Investigations having been completed, the file on the Janice Allen case was sent to the Director of Public Prosecutions for ruling on November 17, 2000.

The Director of Public Prosecutions ruled on May 3, 2001 that Constable R. Allen of the Denham Town Police Station be charged for the murder of Janice Allen. He was arrested on May 25, 2001 and is presently on trial for the murder of Janice Allen.<sup>1</sup>

The Special Rapporteur's comment that

**"The trial appeared to be far from conclusion despite the interest shown in this case"**

is surprising as the determination of a case on the basis of interest shown in the case is not a factor in national or international law.

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<sup>1</sup> Since the Government of Jamaica completed its comments on the Report of the Special Rapporteur, there has been a finding of not-guilty in the case of Janice Allen. The presiding Judge, in accordance with applicable domestic law, was obliged to direct the jury to return a not-guilty verdict as there was insufficient evidence to support the prosecution of the case. The Commissioner of Police has since requested the Bureau of Special Investigations to investigate the circumstances which may have resulted in insufficient evidence to support the case.

**Paragraphs 36-38: Michael Gayle**

Michael Gayle died as a result of injuries received in a beating. The jury, comprised of civilians, stated that all the security forces personnel who were at the scene of the incident should be charged with manslaughter. The difficulty in implementing that verdict lies in the inability to separate and isolate acts or omissions by the soldiers and police involved in the incident. The Director of Public Prosecutions, as is permissible under law, did not proceed to lay charges. The reason for this decision was the fact that in order to prosecute for manslaughter, sufficient and credible evidence was required to bring charges.

From the investigations and statements received it is not possible to say which person or persons inflicted the injuries that led to the death of Michael Gayle.

The decision by the Director of Public Prosecutions not to charge the accused in this case was cited by the Special Rapporteur as

**"a prime example of the Director's bias in favour of police suspected of abuse and misuse of authority".**

We wish to emphasize to the Special Rapporteur that a criminal prosecution cannot be mounted on the basis that

**"the Director of Public Prosecutions was supposed to 'prosecute' and not 'protect' those accused of crimes".**

The Government of Jamaica is of the view that prosecution has to be mounted on credible evidence that can clearly point to the acts or omissions of some specific person(s) and that such acts or omissions led to the death of Mr. Gayle.

Further, in a criminal prosecution there is a named defendant(s). Under Jamaican law charges are not laid against a class of persons. All criminal prosecutions are against persons.

One cannot simply indict *"members of the security force"*.

The prosecution must be able to show, beyond reasonable doubt, the role that each person played in the incident in keeping with accepted national and international standards.

The Government of Jamaica places on record the fact that the Director of Public Prosecutions has, on more than one occasion, publicly indicated that his office is willing to receive information on this matter from any person(s) with additional evidence.

The Report does not indicate whether the persons whose views are faithfully recorded were able to provide the evidence which would indicate **beyond reasonable doubt** the role each person played in the incident.

The Government of Jamaica notes on the question of compensation that, as relayed to the Special Rapporteur prior to and during her visit, the right of compensation for wrongs suffered is recognized under the Constitution of Jamaica as well as in our international obligations. It is customary for families to file claims after criminal proceedings.

There is no obstacle to claims being filed earlier. The responsibility for filing claims rests with the families. Nonetheless, in December 2003, the Government initiated settlement negotiations in relation to the civil suit filed by the Estate of Michael Gayle. By letter dated December 11, 2003, the Government indicated to Counsel for the Estate of Michael Gayle that "liability on the part of the Government cannot be contested and the matter should be settled." Successful settlement negotiations will result in the payment of monetary compensation by the Government to Michael Gayle's Estate.

The Government of Jamaica further notes that, in its ongoing efforts to ensure protection of citizens' rights, those lacking the resources to obtain the services of a private attorney can receive help through the Government's Legal Aid Programme as well as the Public Defender.

Examination of the Civil Court records will demonstrate that the right to compensation is generally vigorously and successfully pursued in Jamaica.

#### **Paragraph 39-41: Patrick Genius**

Mr. Patrick Genius was allegedly shot by group of policemen. Investigations were conducted and completed by the Bureau of Special Investigations under the supervision of the Police Public Complaints Authority.

The completed file was referred to the Director of Public Prosecutions who ruled that the matter be sent to the Coroners Court for Kingston and St. Andrew.

The Coroners Court hearing began March 6, 2001. On May 29, 2001 the verdict was handed down that person unknown was criminally responsible for the death. On January 3, 2002 the Director of Public Prosecutions ruled on the Depositions in the Coroners Inquest that no one be charged.

Lawyers representing the family applied to the Full Court for leave to have the Director of Public Prosecutions ruling reviewed.

The Full Court granted leave on October 31, 2002. The matter was heard on April 7, 8, 9 and on May 2, 2003. The Supreme Court handed down its decision on May 2, 2003.

Given the allegation in Paragraph 39 of the Report that Mr. Genius' right to life was violated by his being "**shot by the police in the head at close range**", the Government of Jamaica draws attention to point 5 of the Judgement which states, *inter alia*, that "**there was no evidence of gunpowder deposits on the body and he was of the opinion that the wounds were indicative of 'far range firing'**".

The Government of Jamaica notes with surprise that the Special Rapporteur refers to the May 2 decision of the Supreme Court in this matter only as it relates to the decision regarding the prerogative of the Director of Public Prosecutions and seemingly ignores the other areas of the ruling which answer all the concerns raised in her report.

We therefore reproduce below for your information the findings and conclusions handed down in The Supreme Court of Judicature of Jamaica.

## **Findings**

"[43] Having considered the issues, the authorities and the submissions made by Counsel in this matter I find as follows:

1. There is nothing unlawful in the policy of the Director of Public Prosecutions in this case. It has not been shown either that his decision not to prosecute was unfair.
2. It has not been established that the Director failed to act in accordance with any policy.
3. There is no evidence to support the proposition that the Director of Public Prosecutions must have failed to consider relevant material or that he had irrelevant considerations in mind.
4. The fact that the forensic test did not reveal any gunshot residue on the back of the deceased's man hand is a matter that requires some consideration. In my view however, a reasonable prosecutor would also have to consider the other aspects of the forensic evidence. The forensic analyst had found that there was a trace level of gunshot residue in the palm of the right hand of the deceased. She had also testified, *inter alia*, that the level of gunshot residue might vary depending on what is done after the weapon was fired. According to her, if any attempt is made to clean the hands there may be little or no trace of gunpowder residue. Furthermore, she testified that the time aspect could also affect the level of gunpowder residue.
5. There was evidence that the deceased was not shot at close range. The forensic pathologist who had performed the post mortem examination on the body of the deceased found *inter alia*, that there was no evidence of gunpowder deposits on the body and he was of the opinion that the wounds were indicative of "far range firing".
6. There is no need to have the remains of the deceased exhumed in order to determine from whose firearm the fatal bullet was discharged. Under the principle of common design and where persons are acting in concert, the act of one becomes the act of all.
7. The burden of proof rests entirely on the Crown and that duty can only be discharged by eliciting evidence which satisfies a jury beyond reasonable doubt that an offence is committed. The exercise of the DPP's judgement therefore involves an assessment of the strength by the end of the trial of the evidence against a defendant and of likely defences. In this instance, self defence would indeed be a live issue.
8. It is therefore my view that this is not a case for further investigation.
9. It is further my view, that the decision not to prosecute is not perverse and neither is it a decision which no reasonable prosecutor could have arrived at.

### **Conclusion**

[44] I am therefore not persuaded that the applicant has succeeded in discharging the burden that is necessary to condemn a decision as Wednesbury unreasonable. I am not persuaded either that the Director of Public Prosecutions should be compelled to charge the police officers. Accordingly, I have concluded that the application in this matter must be refused."

#### **Paragraphs 45-49: Braeton 7**

The visit of the Special Rapporteur took place while this matter was still being processed. Investigations having been ended, the Director of Public Prosecutions has ruled that six (6) police officers be charged. The matter is now before the Supreme Court for trial.

The allegations in Paragraph 48, sentence 2 are being heard for the first time by the State. It is not clear whether the Special Rapporteur made an attempt to ascertain whether such television footage exists and whether pressure was exerted on the television station and by whom in order to prevent the airing of the footage.

#### **Paragraph 50: Hilaire Sobers and others**

Jamaica has a proud and unblemished record in the area of freedom of expression and freedom of the press. Paragraphs 50 and 51 of the Report refer to threats received by journalists. The Government of Jamaica deeply regrets and condemns the occurrence of death threats against Mr. Sobers and his colleagues.

We are not surprised the Special Rapporteur's Report states:

**"there was no indication whatsoever that the Government was involved" ,**

and further states in the last sentence of paragraph 51:

**"no complaints were made to the police, and ... there was no reason to believe that the authorities had anything to do with these threats."**

#### **Paragraph 76: The West Kingston Commission of Enquiry**

The State finds incorrect the comments in paragraph 76 that:

**"The West Kingston Commission of Enquiry (June 2002) into the incident at Tivoli Gardens ... went out of its way to completely exonerate members of the security forces."**

The findings of the Commission did not completely exonerate the security forces and a number of its recommendations are targeted to improving the capacity of the security forces in carrying out their duties and strengthening mechanisms for disciplining police officers when they engage in unprofessional conduct.

The West Kingston Commission of Enquiry produced a report of 139 pages not including appendices and expert papers.



Chapter 17 of the report, which amounted to some 17 pages, was devoted to recommendations to assist the Security Forces in the effective and professional discharge of their responsibilities for the maintenance of law and order.

Chapter 1, pages 1-8 of the report, contains the Executive Summary of the Commission's findings and recommendations, excerpts of which are reflected below. These serve to counter the findings of the Special Rapporteur.

"We find that:

- no evidence exists that can attribute the loss of lives of twenty-seven civilians in West Kingston during 7-10 July 2001 to the action of the Security Forces only;
- results of the ballistics tests do not demonstrate conclusively, that the bullets recovered from the bodies of deceased persons were fired by any gun used by the Security Forces or any armed civilians;
- the bullets taken from the bodies of Corporal Mark Henry and Lance Corporal Kevin Lawrence, did not come from any weapons that were submitted by the Security Forces for testing;
- it is probable that the bullet which injured a young girl alleged to have been lying in her bed in an apartment in Tivoli Gardens could have been fired from the Barrett 82 rifle, used by a member of the Jamaica Constabulary Force.

### **Recommendations**

A new accountability mechanism should be established at the national level in the form of a National Crime Commission with oversight responsibilities for the operational effectiveness of the Jamaica Constabulary Force.

Existing mechanisms for disciplining police officers who abuse their discretionary powers and engage in unprofessional conduct generally should be replaced by a Civilian Review Board with authority to hold hearings respecting breach of orders and abuse of discretionary powers, abusive conduct, and unprofessional behaviour: all citizens in the society regardless of their station in life should have access to this Board.

Police officers as a class should be made subject to the *Corruption (Prevention) Act 2000*."

The Government of Jamaica records that a copy of the West Kingston Commission of Enquiry Report was given to the Special Rapporteur during her visit.

### **Paragraph 56-58: Capital Punishment**

This is a grave allegation which has not been substantiated. The State has always respected the rights of minors and the mentally ill in all cases, including capital cases.

**Concluding Remarks by the Government of Jamaica:**

The Government has already taken measures to ensure that complainants have access to all legal remedies and that justice is fully served. The challenge is to educate the public on the avenues available.

The Ministry of Justice, on International Human Rights Day, opened the Justice Education Unit which has as its mandate the implementation of a broad based public education programme.

The problems with jury selection for the Coroners Court is a reflection of citizens' unwillingness to do jury duty. Selection is done randomly from the Electoral list. The fact that in some instances persons sit more than once as jurors is a reflection of their willingness to serve. However, in recognition of the negative interpretation which has been given this, a sub committee of the Human Rights Consultative Committee was recently established to make proposals on the matter.

Additionally, it is anticipated that the public education programme on rights and justice will sensitize unwilling citizens as to their responsibilities.

The Director of Public Prosecutions is a Constitutional Office. The holder is empowered to institute or take over criminal proceedings in the national courts. He is not entitled to initiate or conduct investigations.

He offers advice and guidance to the police or other investigating bodies on matters of the criminal law and evidence.

It is envisaged that with proper education and understanding of their responsibility in providing the required information in order to ensure allegations are substantiated and charges laid as in the cases of Janice Allen, Richard Williams and the Braeton 7, more citizens will recognize that the Office of the Director of Public Prosecutions does in fact serve the interest of the public.

Jamaica fully recognize that some members of our security forces regrettably have been, on occasions, guilty of excessive use of force and abuse of the authority vested in them. This should not detract from the fact that members of the security forces are on the whole disciplined and professional. The records will show that despite financial constraints, and with the help of our international partners, we have embarked on a continuous programme of training and acquisition of more modern equipment.

The Government has indicated the importance placed on human rights by the creation of Human Rights as a special ministerial portfolio under the Minister of Justice.

- In keeping with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Ministry of Justice has improved access to the mechanisms of justice through the provision of assistance from the Public Defender and the government's Legal Aid Programme.
- The responsiveness of Judicial and administrative processes has been strengthened through the introduction of Case Flow Management in which citizens, their legal representatives and the Judge are involved prior to the hearing of the matter.

- The language used in court and in legal matters generally has been simplified to ensure full understanding on the part of the citizens.
- Strengthening the principle of innocent until proven guilty, recognition of fundamental right to family, employment and liberty have been enhanced through the passage of a new Bail Act which makes the granting of bail easier thus allowing the accused to remain at liberty until the case is concluded.
- Establishment of new sentencing options and informal mechanisms for the resolution of disputes including mediation are being utilized to lessen the loss of liberty through incarceration, facilitate conciliation, redress, and the realization of justice in a timely manner.
- Police, justice and health personnel have received training to sensitize them to the needs of victims. Police have been trained in the proper handling of the crime scene, as well as the handling of incidents of domestic violence, and have received special training in the handling of sexual assault cases. In addition, a special unit has been established to deal with these cases.
- A Victim Support Programme is in place and the Ministry of Justice is currently drafting a Victims Charter.

These are but a few of the initiatives the State has taken to ensure that the rights of citizens are protected.

The Government has been unrelenting in its condemnation of abuses at the hands of the security forces and remains committed to ensuring all such acts are investigated in keeping with the Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions, the Code of Conduct for Law Enforcement Officers and the Basic Principles on the Use of Force and Firearms for Law Enforcement Officials. Indeed, the Government has requested the assistance of international partners in the investigation of incidents when required.

The Government of Jamaica takes this opportunity of reaffirming its commitment to continue to pursue programmes and policies which will promote and uphold human rights principles as adumbrated in the United Nations Universal Declaration of Human Rights and all other Conventions and Principles.

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