

**Presentation to the Jamaicans for Justice Human Rights Forum  
by Senator the Hon. Mark Golding, Minister of Justice**

Greetings.

**Administration policy for people deprived of their liberty.**

As you are no doubt aware, in the aftermath of the tragic circumstances of the death of Mario Deane, Cabinet established a sub-committee headed jointly by the Minister of National Security and Minister of Justice. This sub-committee was tasked with reviewing the detention system and developing a strategic response to the situation. Members of the committee included a wide range of private and public sector actors, including Jamaicans for Justice, who supported the deliberations of the sub-committee. The sub-committee completed its work at the end of 2014 and made a number of recommendations, which were accepted by Cabinet and presented to Houses of Parliament in Ministry Paper 89/15 earlier this year.

I should mention that many of the measures for reform which I will address this evening predate the death of Mario Deane, and some of the measures recommended by the committee overlap with work which had already begun to deal with modernizing our criminal justice system.

With respect to process improvements and law reform, the sub-committee made several recommendations for legislative amendments particularly to the Bail Act and the Constabulary Force Act, as well as administrative improvements which would see fewer people arrested, held in custody

awaiting bail or held on remand unnecessarily. The recommendations include:

- a. Extending the category of offences where bail is mandatory;
- b. Extending the availability of own surety bail;
- c. Expanding the use of “fixed penalty Notices” (i.e. tickets for minor offences);
- d. Introduction of caution system;
- e. Greater use of non custodial sentencing options;
- f. Standardizing of requirements for taking up bail;
- g. Amendments to the Bail Act to restrict detention for purposes of a identification parade, austerly of a Resident Magistrate or Justice of the Peace to authorize detention without charge beyond 48 hours, insertion of clear time limit for a detained person to be brought before the Court, adopting the concept of bail pending charge;
- h. Pre-charge detention and monitoring;
- i. Amendments to the Constabulary Force Act;
- j. Introduction of apprehension reports for detained persons;
- k. Enhancement and, encouragement of Resident Magistrates to utilize their powers to make weekly enquires into the conditions of persons detained;

- I. Enhanced role for Justices of the Peace to make daily visits to lockups;
- m. Enhanced and regular training by all levels of the Court system in the Director of Public Prosecutions Protocol on the Decision to prosecute;
- n. Time limits for commencement of trials; and
- o. Updating the Prisons (Lock Up) Regulations 1980.

The recommendations in relation to bail need further technical consideration, and are currently being reviewed by a small technical committee which I have set up. The committee is lead by the Director of the Legal Reform Department and includes representatives from the public and private bar. Their main objective is to examine the feasibility and constitutionality of the recommendations and to advise me in short order on concrete steps to reform the relevant laws to implement the recommendations.

In relation to time limits for commencement of trials, the Ministry of Justice is currently developing legislation to implement this in the Resident Magistrates Courts. This is an initiative which predates the Cabinet subcommittee. The proposed legislation will provide that cases in the Resident Magistrates courts that have been pending for over two years since entering the criminal justice system without being tried are to be dismissed by the Court, subject to two exceptions:

- Firstly, if the court is satisfied that there were exceptional circumstances outside of the control of the prosecution that have

caused the delay, then the Court will have discretionary power to allow the case to proceed to trial within such an additional period (not exceeding 6 months) as the Court may determine.

- Secondly, where the prosecution satisfies the Court that the prosecution has acted with due diligence to bring the matter to trial expeditiously and that the delay beyond two years was substantially attributable to the acts or omissions of the accused person. This will be treated as an exception to the general rule and the case will be allowed to proceed to trial within such additional period (not exceeding 6 months) as the court may determine.

The sub-committee's recommendations with respect to Lock-up Administration Policy include:

- a. The establishment of a Suicide Prevention Protocol which would outline procedures to be followed when dealing with persons who manifest suicidal tendencies;
- b. Inclusion of provisions which target mental health and physical injury/concerns;
- c. Specific provisions which outline how persons with disabilities and children in conflict with the law are to be dealt with;
- d. Ongoing Training and capacity building in the JCF regarding the treatment of persons deprived of their liberty;
- e. Sanctions for breaches of the policy; and

- f. Specific provision for persons who are on remand and in the custody of the Department of Correctional Services.

The sub-committee also produced a revised version of the JCF's existing Lock-up Administration Policy, entitled *Administration Policy for Persons Deprived of their Liberty*, which includes these proposals. The Ministry of National Security, which has portfolio responsibility for this, has been engaged in internal dialogue with the JCF and the Department of Correctional Services with a view to the implementation of the revised policy.

The sub-committee also made several recommendations for the removal and transfer of remandees from lockups to remand centres, transfer of administrative responsibility for remandees from the JCF to the Department of Correctional Services, and the recruitment and training of additional correctional officers and expansion of remand facilities.

Of particular note was the recommendation that the Government of Jamaica should seek private sector partners to build, own, and operate (or a variant thereof) a maximum security prison for an estimated population of 3,500, and should aim to retire the Tower Street Adult Correctional Centre and the St. Catherine Adult Correctional Centre in 5-7 years and transfer their inmate populations to the new modern correctional facility.

It should be noted that the need for a modern facility to replace those two slavery-era facilities has long been recognized by the Government, indeed well before the circumstances that led to the establishment of the Cabinet Sub-Committee. Those facilities are centuries old and dilapidated. The conditions are severely overcrowded, sub-standard and inhumane, and

violate the human rights of the inmates. They were not built with rehabilitation in mind, and so very little effective rehab can take place.

The result is that the current situation often turns minor offenders into hardened, bitter criminals. Indeed, it encourages re-offending, and contributes to Jamaica's high rates of serious crime. The existing arrangements have been the subject of ongoing (and legitimate) international criticism, and are a major blot on Jamaica's human rights record and reputation. Indeed, I have been advised that the current conditions in Jamaica's prison are contributing to Jamaica's inability to sign on to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

A modern, rehab-focused correctional facility to replace those two old and decrepit prisons is absolutely essential, and critical to Jamaica's national development. However, up until now nothing has been done to move us forward with this, due to financing constraints and the political realities that make it difficult to allocate public resources to build a modern correctional facility rather than prioritizing more populist causes, such as schools and hospitals.

As you are aware from recent developments, the Government has made significant efforts to negotiate concessionary financing from the British government. This is an opportunity that was apparently spurned by the last Administration, which chose not to advance the process of prison reform in the face of the human rights abuses that characterize our current arrangements.

The Jamaican prison population is 3,900 persons as at October 2, 2015, 70% of whom are medium risk inmates serving sentences from 6 months to 3 years. The two main male high security prisons, the Tower Street Adult Correctional Centre and the St. Catherine Adult Correctional Centre, collectively have a capacity of 1,700 inmates but are holding 2,900. No one should be forced to live under these circumstances, and certainly not at the hand of the State, irrespective of the crimes for which they have been convicted.

So we have a very serious problem with our prison facilities. The Government's strategy to deal with this problem is firstly to expand the existing medium security facilities at existing Tamarind Farm and Richmond facilities to accommodate an additional 700 inmates, work on which has started with the new 300-room block being added to Tamarind Farm, and secondly to build a new, modern high security facility to house the approximately 1,200 high risk inmates in the system in conditions that allow fulsome rehabilitation and meet international standards for persons in detention. If we are better able to rehabilitate our prisoners then we won't continue to see the high rate of re-offending by former inmates after they return to society having served their time. Prison reform is, therefore, a national security imperative.

The deal that has been negotiated with the British Government contemplates Jamaica benefitting from \$5.5 Billion in grant funding to help finance a new facility to house 1,500 to 2,000 inmates, and includes J\$1 Billion to facilitate the rehabilitation and reintegration of up to 300 Jamaicans in prison in the UK who may be returned to Jamaica to serve the remainder of their time.

This grant financing will cover between 55% and 68% of the estimated cost of building the new facility, depending on whether it is designed to house 1,500 or 2,000 inmates. It is anticipated that the balance will be financed by divesting the real estate in Downtown Kingston and central Spanish Town where the two existing facility are located, which is expected to yield close to J\$2 Billion and facilitate the redevelopment of both Downtown Kingston and central Spanish Town, and perhaps a grant from the new £360 Million infrastructure that the UK has committed to the less wealthy Caricom countries (in GDP per capita terms). Therefore, this deal will enable a modern, internationally compliant correctional facility to be built to replace our two main prisons with minimum (if any) financial contribution from the Jamaican taxpayer.

Points to note on this potential deal include the following:

- The Memorandum of Understanding that has been signed is merely an agreement in principle, and does not have contractual effect. There are many key details still to be negotiated, including the duration of the prisoner transfer arrangement, the extension of UK rules around probation to transferred inmates, and arrangements for reciprocity as regards to UK citizens doing time in Jamaica.
- Only Jamaicans who are subject to deportation orders will be eligible for transfer. In other words, these are Jamaicans who are in any event returning to Jamaica when they complete their sentences in the UK. Dual nationals will not be eligible for transfer.
- The Jamaican Government will retain the right to refuse any particular inmate. If the inmate does not have significant family ties in

Jamaica, or has lived most of his life in the UK, he will not be accepted for transfer.

- The prisoner transfer arrangement cannot proceed without the passing of legislation. That Legislation will require a judicial process whereby any individual transfer will have to be approved by a Jamaican court before it may proceed. Compulsory prisoner transfer arrangements exist across the European Union, and the UK also has such arrangements with some developing countries. It is instructive to note that Nigeria, which has the largest cohort of foreign nationals in UK prisons and has been in a compulsory prisoner transfer arrangement with the UK for two years, has so far only seen 1 inmate transferred, and there are 16 applications pending. Due process rights, including claims based on the European Human Rights Convention, have to be exhausted in the UK before a request for transfer can be accommodated. We therefore do not expect that the numbers to be transferred to Jamaica will be anywhere close to the agreed cap of 300. This expectation is supported by a press release appearing on the UK Office of the Prime Minister today, which states that the deal is expected to save British taxpayers around £10,000,000 over 30 years once prisoners are returned from 2020 onwards, which this works out at an average of about 12 transferred prisoners being here in each year over that period.
- The principal benefit that Jamaica will derive from this is the building of a modern, internationally compliant facility to replace our two largest facilities that are a national disgrace. However, from a financial standpoint, the arrangement is financially positive for

Jamaica, in Net Present Value terms, even if one assumes the maximum cohort of 300 inmates being returned on a continuous basis for approximately 20 years. It is not the intention of the Government for the duration of the prisoner transfer agreement to extend beyond a period which is Net Present Value positive for Jamaica.

It is most unfortunate that the current public discourse on this proposed arrangement with the UK has demonstrated a callous disregard for our citizens who make a mistake and end up in our prison system, most of them being young black men who are often first-time offenders. No-one should be forced by the State to live in the conditions which currently exist at Tower Street and St. Catherine, with inadequate rehabilitation opportunities and a high chance of becoming hardened and bitter and re-offending upon re-entry to society. The public's visceral abhorrence to the idea of Jamaica being assisted in rectifying this longstanding and shameful predicament seems to be based partly on thoughtlessness or ignorance, and partly because of the most unfortunate conflation of this effort at prison reform with the initiative to seek reparations for slavery from the United Kingdom.

The Jamaican Government supports the Caricom initiative to pursue reparations for the historical injustice of African slavery, the vestigial effects of which continue to hamper our efforts at national development. We brought the Report of the Reparations Commission to Parliament, and moved the Resolution for its recommendations to be adopted. We are facilitating and supporting the work of the Caricom initiative, led by Prime

Minister Ralph Gonsalves of St. Vincent and the Grenadines, to pursue the reparations claim in a resolute and respectful manner.

However, Jamaica and the UK have bilateral relations doing constructive work in a number of important areas. The bilateral initiative at financing a modern correctional facility is very important, and should not be mixed up in or confused with the movement pursuing reparations. It would be a shame if we were to lose the opportunity of J\$5.5 Billion in grant finance to tackle the urgent human rights imperative of prison reform, because of the muddled, emotional impulses that are driving the current public discourse on this matter.

### **Persons in custody who are unfit to plead**

The Ministry of Justice has, working along with the Ministries of National Security and Health, established an ongoing programme in collaboration with the Legal Aid Council and the Department of Correctional Services, to identify and provide legal assistance to inmates who have been detained for protracted periods because they have been ruled unfit to plead due to mental illness. These individuals often end up in prison for periods far longer than the maximum penalty applicable to the particular offence for which they were charged. This is a multi-dimensional problem that requires inputs across several parts of Government and the NGO community to be satisfactorily addressed.

The process began with an audit being undertaken of the Correctional facilities to identify all persons who are unfit to plead in these facilities, and arrangements were then made by the Legal Aid Council for their cases to be brought back before the courts, utilizing the mechanisms in the Criminal

Justice (Administration) (Amendment) Act, 2006, which treat with these persons.

The Director of the Legal Aid Council, was tasked with spear-heading the efforts to have matters re-listed before various Courts all over the island. Up to June 15, 2015 the Half-Way-Tree Resident Magistrate's Court has been approached for 18 cases to be re-listed and affidavits have been prepared outlining the circumstances for this request. Three other cases are being pursued in the Savanna-la-mar, Black River and Port Antonio courts.

The Courts will not release mentally challenged inmates without assurances of appropriate care being available to them upon re-entry into society, and the biggest challenge has been to locate family members willing to assist with taking inmates when they are released, or institutional space to accommodate those who cannot be placed with families. Attempts to locate relatives have not been entirely successful and many relatives who have been located do not wish to be involved with assisting their relative who has been deemed unfit to plead.

Our institutional facilities for persons with mental disorders do not have adequate spare capacity to take persons in the required numbers. So while we have managed to secure the release of several inmates, there are others who cannot be released until satisfactory arrangements can be made for them. Jamaica urgently needs to put in place appropriate institutional support for persons with mental disorders who can make their way in society with regular care and oversight to ensure that they are taking

their medication and have a place to sleep and are receiving adequate nutrition.

### **Reform of Ganja Laws**

An important and far-reaching recent initiative which has already had a significant impact in reducing arrests and possibility of detention is the recent reform to Jamaica's ganja laws. The amendment to the Dangerous Drugs Act, which came into force earlier this year, has as one of its primary policy goals the elimination of the arrest and incarceration of young people for minor ganja offences, removing of this source of friction and abuse between the police and individuals, especially in economically challenged communities. The law now provides that possession of less than two ounces and smoking of ganja in public are non-arrestable infractions for which a ticket may be issued, and the penalty is J\$500 payable at any tax collectorate and there will no criminal record.

The law also requires the referral to the National Council on Drug Abuse of offenders under the age of 18 years, and adults who manifest a drug dependency problem. The National Council on Drug Abuse has commenced a public education programme aimed at discouraging use among adolescents, and we will be expanding the Drug Court programme so that it is available to persons between the ages of 12 and 18 who are now excluded from it.

Already we have seen a reduction of arrests by approximately 1,000 arrests per month by the police, and expect to reduce by 15,000 per year the number of such cases which go before the courts. This will significantly

lessen the number of young men who are introduced into our criminal justice system.

We have also this year introduced regulations enabling persons with past convictions for personal use of small quantities of ganja to be automatically expunged, simply by applying for a police certificate of their criminal record. The request for a police certificate is treated as an application for expungement of their record for those offences, and the police certificate is issued clean and clear of those past convictions. When I last checked, well over one thousand persons had already benefitted from this procedure, and over time we expect many thousands of Jamaicans to have the blot of a criminal record removed via this mechanism, thereby enhancing their employment and travel prospects.

### **Restorative Justice**

The Restorative Justice Programme seeks to deal with the underlying causes of a conflict so that they will not reoccur or escalate. It is seen as a more effective means of responding to and resolving offences committed by repairing the harm caused by the offence. The process involves bringing the victim and the offender together, guided by a facilitator, to hold the offender accountable in a more meaningful way that resolves the underlying issues that often lead to the escalation of disputes and reprisals.

Restorative Justice is being increasingly practiced in communities throughout Jamaica since the first Restorative Justice Centres were opened in 2012. The process aims at identifying and addressing the damage and obligations that arise out of the wrongdoing; reintegrating the offender into the community by supporting the rebuilding of broken

relationships, and attending to the needs of victims by empowering them to participate in identifying reparative measures to be taken by the offender and the community in the justice process. In so doing, it seeks at the initial stages to divert persons in conflict with the law or each other from the criminal justice system.

The Ministry of Justice is in the advanced stages of preparing legislation which will incorporate restorative justice into the formal justice system. Restorative Justice will be available in respect of a wide range of less serious offences where the offender accepts responsibility for his/her actions and both the offender and victim consent to participate in the restorative justice process. The factors to be taken into account when referring an offence to a restorative justice process include the seriousness of the offence, there being reasonable grounds for believing that the offender will benefit from a Restorative justice process, the nature of the harm done to the victim, and any exceptional circumstances of the particular case.

Not all Offences may be referred to a restorative justice process. The offences of murder, sexual offences, wounding with intent, human trafficking offences, praedial larceny offences, extortion offences, firearms offences and serious drug offences will continue to be dealt with by the formal criminal justice system.

The legislation will amend various pieces of legislation to allow certain offences to be dealt with by a restorative justice process at several stages in the criminal justice process:

- a. **The pre-trial stage**, where reference to the Restorative Justice Programme may be made by the police or by the courts. Where the accused is charged but the case has not yet gone to trial, the successful conclusion of the Restorative Justice process will allow for the matter to be dismissed and not result in criminal conviction.
- b. At the **post conviction stage** but before sentencing, a post-conviction Restorative Justice Order may be made, the effect of which is to defer sentencing and allow the offender to participate in a restorative justice process prior to sentencing that person. Successful conclusion of a Restorative Justice process will be a factor which the judge must take into account in sentencing the defendant.
- c. At the **post sentence stage** the Department of Correctional Services will be enabled to refer an inmate to Restorative Justice in appropriate cases, and in particular prior to release on parole, with a view to the successful reintegration of the inmate back into the community. An eligible inmate may be referred to a restorative justice process during incarceration, and the Parole Board may require a parolee to participate in a Restorative Justice process as a special condition of a Parole Order.

The Bill will also amend the Child Care and Protection Act to empower the Children's Court to make Restorative Justice Orders for child offenders to participate in restorative justice processes prior to trial or sentencing.

As a separate but synergistic exercise, a White Paper on Child Diversion has recently been tabled in Parliament. Its development was preceded by a

process of consultation with broad stakeholder groups. We look forward to constructive feedback on the White Paper, after which we will develop the necessary legislative arrangements to support the implementation of the Child Diversion Policy.

Finally, the Ministry of Justice has been working towards the establishment of a National Human Rights Institution for Jamaica, which is to be compliant with the Paris Principles. We have received very helpful guidance and assistance on this project, from the Commonwealth Secretariat and the UNDP. The current thinking is to expand the role of the Office of the Public Defender, which was originally established under interim legislation, to take on the broader functions of a National Human Rights Institution. Consultations with stakeholders on this initiative are ongoing, and are to include civil society organizations with a strong interest in human rights. After the consultation process is complete, I will be taking the finalized proposal back to Cabinet, to seek its approval.

Ladies and Gentlemen, it has been a pleasure sharing these thoughts with you this afternoon. The Ministry of Justice is fully committed to improving the human rights landscape in Jamaica, in particular by improving access to justice for our citizens and strengthening all our key national justice institutions. I look forward to continuing to work collaboratively and constructively with you, as we move forward with this most important aspect of our national development.

Thank you.