



General Assembly

Distr.: General
20 August 2010

Original: English

Human Rights Council
Working Group on the Universal Periodic Review
Ninth session
Geneva, 1–12 November 2010

National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1*

Jamaica

* The present document was not edited before being sent to the United Nations translation services.

Contents

	<i>Page</i>
I. Methodology and consultation process	4
II. Country background.....	4
Political and Socio-Economic Overview	4
III. General Legal and Policy Provisions for the promotion of human rights	5
A. The Constitution	5
B. International Human Rights Treaty Obligations	6
C. Economic, Social and Cultural Policies	6
1. Combating Poverty	6
2. Labour	7
3. Social Security	7
4. Health	7
5. Education	7
6. Culture	9
IV. Protection and promotion of human rights	9
A. Gender Issues	9
B. Children and Youth	10
Care and Protection.....	11
C. The Elderly	12
D. Persons with Disabilities	12
V. Achievements, best practices, challenges and constraints	13
A. Achievements and best practices	13
1. Justice Reform	13
2. Health	13
3. Education	15
4. Police Reform	15
5. Human Trafficking	16
6. Refugee Policy	16
B. Challenges and Constraints	16
1. Public Security	16
2. Sustaining Development Achievements	18
VI. National priorities and commitments	19
A. Crime Prevention and Security Strategies	19
Peace Management Initiative (PMI).....	19

B.	Justice Reform	20
C.	The Protection of Children in State Care	21
D.	Education	21
E.	Health	22
VII.	Expectations of the State	22

I. Methodology and consultation process

1. Jamaica's National Report was prepared following consultations with government as well as non-governmental organisations. Meetings, coordinated by the Ministry of Foreign Affairs and Foreign Trade, were conducted to sensitize stakeholders to the Universal Periodic Review (UPR) process and to receive inputs on the issues to be addressed in the report. The final report takes into account the outcome of these consultations and is structured according to the guidelines established by the Human Rights Council.

II. Country background

Political and Socio-Economic Overview

2. Jamaica is a parliamentary democracy based on the Westminster system of government. The separation of powers among the three branches of government: the Executive, the Legislature and the Judiciary, is entrenched in the Constitution. The Legislature consists of a bicameral parliament, with an Upper House (Senate) and a Lower House (House of Representatives). The Executive comprises the Prime Minister who is elected from among the Members of Parliament of the Party that wins the majority of seats in the general election and the Cabinet comprising members of that party. There are two main political parties in Jamaica, the ruling Jamaica Labour Party (JLP) which came to office following general elections in August 2007 and the People's National Party (PNP). Jamaica is a unitary state but also has a local government network of town and city councils, and community-based Councillors.

3. The Jamaican judiciary and legal system are based on British common law and practice. It is a multi-tiered system to handle criminal and civil matters. Resident Magistrates try misdemeanor offences and civil offences while the Supreme Court tries felonies and other civil cases, other than those involving firearms (the latter being handled by the Gun Court). Defendants have the right to appeal a conviction to the Court of Appeal, which is the highest Jamaican court physically located in Jamaica. The Constitution allows appeals from the Court of Appeal to the Judicial Committee of the Privy Council in the United Kingdom as a final court of appeal as of right in some cases and with the leave of the Court in others.

4. Jamaica has a long tradition as a stable democracy with respect for the rule of law and fundamental human rights and freedoms. Successive elections have resulted in the peaceful transition of power among the political directorate. The country has an established tradition of democratic participation, free expression of opinion and a free press.

5. The population of Jamaica at the end of 2009 was estimated at 2,698,800 with an annual growth rate of 0.2 per cent. Of this amount, 1,329,300 or 49.3 per cent are males while 1,369,500 or 50.7 per cent are females¹. Historically, the Jamaican economy was primarily based on agriculture and was dependent on a few staple crops. Since the 1950s, however, the contributions of tourism and the bauxite industry to the GDP have steadily increased, with these sectors, along with remittances, becoming major contributors to the economy.

¹ Source: Economic and Social Survey of Jamaica, 2009.

6. The global economic recession has had a significant impact on the Jamaican economy². Foreign exchange inflows have decreased due to reduced earnings from the bauxite/alumina sector, remittances and tourism. The crisis also impacted Jamaica's access to credit markets and global and domestic demand for Jamaica's products. For 2009, real GDP contracted by an estimated 2.7 per cent to J\$490, 842.3 million, representing the second annual decline³. The average unemployment rate was 11.4 per cent in 2009 up from 10.6 per cent in 2008, with the male unemployment rate being 8.6 per cent and the female rate being 14.8 per cent. The global recession also magnified fundamental economic structural weaknesses such as a high debt burden, which is currently estimated at 132 percent of GDP, and an inefficient and inequitable tax system.

7. These conditions have prompted the Government's return to a borrowing relationship with the International Monetary Fund in an effort to achieve sustainable macroeconomic stability. Among the areas of focus are public debt management, the implementation of measures that would limit the size of future deficits and the consolidation of public bodies through mergers, divestments and improvement in efficiency.

8. The country also continues to grapple with social challenges arising, *inter alia*, from high rates of violent crime. This has impeded further growth and development through reduced investor confidence and heightened security concerns.

9. Notwithstanding, Jamaica has made considerable progress towards meeting international standards in a number of key social indicators such as reduction in absolute poverty, malnutrition and hunger, universal primary enrolment and is on track to providing universal access to reproductive health as well as access to safe drinking water and basic sanitation. In the 2009 Human Development Report of the United Nations Development Programme (UNDP), Jamaica ranked among the countries with medium human development. Jamaica is, however, extremely vulnerable to external shocks such as natural disasters, in particular, hurricane, and global economic instability which have constrained development efforts.

III. General Legal and Policy Provisions for the promotion of human rights

A. The Constitution

10. The Jamaican Constitution is the supreme law of the country. It addresses a wide range of issues such as nationality and citizenship, human rights and fundamental freedoms, and the operation of the Executive and the Public Service. Chapter 3 of the Jamaican Constitution provides for the protection of fundamental human rights and freedoms. The chapter establishes that all persons, regardless of race, political opinion, place of origin, colour, creed or sex are entitled to certain inherent rights as human beings. These include the right to life; the right to personal liberty; security of person; freedom of movement; freedom from inhuman treatment or punishment; enjoyment of property; freedom of conscience and expression; freedom of peaceful association and assembly; respect for private and family life; freedom from discrimination on the grounds of race and the right to

² For a more fulsome treatment of the issue, please consult the Economic and Social Survey of Jamaica, 2009.

³ Source: Economic and Social Survey of Jamaica 2009. During 2008, real GDP for the Jamaican economy fell by 0.9 per cent, the first decline since 1998.

vote. The Government of Jamaica respects the right of all individuals and does not condone discrimination or violence on against any person or group because of their sexual orientation. The Constitution also provides for any person who feels that his/her rights are being violated or likely to be contravened to apply to the Supreme Court (or on appeal to the Court of Appeal) for the enforcement of rights and for redress.

11. A *Charter of Rights and Freedoms (Constitutional Amendment) Bill* which seeks to provide for more comprehensive and effective protection of the fundamental rights and freedoms of all persons in Jamaica has been introduced in Parliament.

B. International Human Rights Treaty Obligations

12. Jamaica is a State Party to most of the core international human rights instruments including the:

- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- International Convention on the Elimination of all Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Convention on the Rights of the Child;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and
- Convention on the Rights of Persons with Disabilities.

13. Jamaica was the first country to ratify the Convention on the Rights of Persons with Disabilities. Jamaica is also a Party to a number of Conventions under the International Labour Organisation (ILO) system. At the regional level, Jamaica is a Party to the Inter-American Convention on Human Rights and the Convention on the Prevention, Punishment and Eradication of Violence against Women.

14. Treaties, including human rights conventions, must be incorporated into domestic law before they can be invoked before Jamaican courts.

C. Economic, Social and Cultural Policies

15. There are several programmes and policies in place to ensure the promotion of economic, social and cultural rights in Jamaica, including the right to work, education, and adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health. The country has already achieved the targeted reduction in absolute poverty, malnutrition and hunger, Goal 1 of the Millennium Development Goals (MDGs), Goal 2, Universal Primary Education, and is on track to providing universal access to reproductive health Goal 5 of the MDGs as well as access to safe drinking water and basic sanitation, target 2 of Goal 7.

1. Combating Poverty

16. One of the largest social assistance programmes of the Government, with a register of 326,000 persons at the end of 2009, is the Programme of Advancement through Health and Education (PATH). The PATH is a conditional cash transfer programme which was implemented in 2001 to assist poor households in breaking the inter-generational cycle of poverty. As at December 2009, the Government has invested in the developmental needs of

320,000 beneficiaries, 70 percent of whom are children (ages 0 – 18). While the main beneficiaries of the Programme are children, it also benefits the elderly, persons with disabilities, pregnant and lactating women, and a small number of indigent adults of working age.

2. Labour

17. The *National Minimum Wage Act* establishes a minimum wage rate for workers. There are also several pieces of legislation such as the *Employment Act* and *Factories Act* which seek to ensure that employees work in safe and just conditions. Additionally, the Occupational Health and Safety Bill, which is in an advanced stage of discussion, seek to address safety and health issues at the workplace. It should also be noted that the right to form and join trade unions is provided for in Section 23 of the Constitution of Jamaica. This constitutional right is buttressed by the *Labour Relations and Industrial Disputes Act* (“the *LRIDA*”) under which every worker is also guaranteed the right to take up membership and participate actively in a trade union of his or her choice. An Industrial Disputes Tribunal, set up under the LRIDA, was established to determine and settle industrial disputes expeditiously as well as promote industrial harmony.

3. Social Security

18. The National Insurance Scheme (NIS) is a compulsory contributory social security scheme which offers financial protection to workers and their families against loss of income arising from injury on the job, incapacity, retirement and death of the insured. Some of the benefits provided under the scheme are retirement pension, invalidity pension, employment injury benefits and maternity allowance. The NIS also facilitates self-employed persons.

4. Health

19. On 1 April 2008, the Government abolished user fees from all public health facilities, except for the University Hospital of the West Indies which is a regional institution. The universal abolition of fees came one year after user fees for children were removed. The policy is intended to improve access to health services for all Jamaican nationals resident in Jamaica. Under this policy, specific diagnostic and treatment services are exempt from fees and are provided to patients within the public health care system. These services include primary surgical operations, hospitalization, dialysis, radiological services and in-patient medical supplies.

20. Questions have been raised about the sector’s ability to cope with the demand and the potential for the quality of care to be undermined in respect of the infrastructure to meet this demand. Admittedly, there have been challenges since the introduction of the policy with two main criticisms being the length of time it takes to receive treatment at some health facilities and the scarcity of several prescription drugs. In response to these concerns, the Ministry of Health has increased the number of types of drugs available in public facilities and has extended the opening hours at some facilities.

5. Education

21. Although there are socio-economic challenges which affect the ability of some individuals to fully access education facilities, public primary education in Jamaica continues to be free and is mandated by law. Over the past 5 years, enrolment rates at the primary level have been consistently high, growing from 95.9 per cent in 2004/05 to full

enrolment in 2009.⁴ In an effort to ensure continued universal access at the primary level, there are ongoing efforts aimed at, *inter alia*, infrastructural development, providing nutritional and educational material support, as well as increasing the cohort and enhancing the quality of teaching and learning in the education system. It should also be noted that the Ministry of Education provides textbooks free of cost to primary schools.

22. A School Feeding Programme has been in existence since 1976 to provide needy students with nutritional support to encourage attendance at school and to enhance their learning capabilities. The School Feeding Programme, which is totally financed by the Government of Jamaica, is an integral part of the Government's Social Safety Net Programme. It is progressively being expanded to reach more needy children as the Government strives to improve basic and primary education. Private Sector Organizations, through the Adopt-A-School Programme, are encouraged to assist in the school feeding programme.

23. In 2007, tuition fees at the secondary level⁵ were abolished in an effort to ensure that all Jamaican children can access public secondary education. Although the Government still endorses the subscription of auxiliary fees, its policy is that no child should be denied access to schooling on the basis of the non-payment of fees. The number of students enrolled in secondary institutions saw a 1.6 per cent increase over the 2007/08 academic year. The Government has also made a policy commitment to ensure universal access for all secondary level students by 2016 and to retain students at the secondary level until the age of 18. Scholarships are awarded by the Government and private sector organizations to provide financial support to students for the duration of their secondary level education. Students can also obtain textbooks under a loan programme.

24. Enrolment at the tertiary level was estimated at 64, 034 students for the 2008/09 academic year. Once a person is qualified, there are no impediments to attaining higher education as long as he/she can afford to do so whether by accessing loans or personally underwriting the cost. Loans can be accessed through the Government Students' Loan Bureau⁶. There are also scholarships available for students wishing to pursue tertiary education, whether through support provided by the Government or by the private sector. During the last decade, access to tertiary level education has increased considerably due to the establishment of additional local tertiary institutions as well as through the services being provided by offshore universities which have been granted licenses to operate in Jamaica.

25. Traditionally, 80 per cent of the cost of education in public universities is borne by the Government while at the level of teachers' and community colleges, the Government bears 65 per cent of the cost. Due to fiscal constraints, the Government has had to impose a nominal freeze on tertiary subsidies that would result in the Government providing the same level of funding as it did in the 2008/09 budget but without taking into account inflationary measures.

⁴ Source: Economic and Social Survey of Jamaica, 2009. It should be noted that primary education relates to children aged 6 – 11 in Grades 1 -6 of Primary, Primary & Junior High, and All-Age Schools as well as private preparatory institutions.

⁵ Secondary education is offered in All-Age and Primary and Junior High Schools (Grades 7 - 9); Secondary, Technical High and Vocational High Schools and Preparatory & Secondary Schools (Grades 7 – 11).

⁶ In excess of 6,000 students apply for loans annually, and on average 88 per cent are successful in accessing a loan from the Bureau. (Source: Ministry of Education)

6. Culture

26. There is a National Cultural Policy (2003) that seeks, *inter alia*, to promote cultural diversity in Jamaica. To this end, the Policy encourages participation in areas such as the celebration/commemoration of indigenous cultures as well as the promotion of folklore and traditional knowledge as part of the school curriculum and community based organizations.

27. It should also be noted that there is a Culture in Education Programme (CIEP) which seeks to enrich curriculum delivery by using culture as the context, content and methodology for learning. The Programme, which began in 2002, seeks to ‘ground’ children in the realities of the Jamaican culture through the performing arts. The Programme also seeks to encourage the study of, reflection on, and use of national images, symbols, heroes as well as participation in commemorative and celebratory events marking local and national achievements.

IV. Promotion and protection of human rights

A. Gender Issues

28. The Government of Jamaica continues to take steps to eliminate discrimination on the basis of gender. Following the National Policy Statement on Women in 1987, much progress has been made in improving the status and empowering women. Currently, a comprehensive National Policy for Gender Equality is being finalized and will further enhance the mainstreaming of gender in public policies and programmes, as well as create more opportunities for redress for offences committed against women and girls.

29. There remains, however, an unacceptably high level of violence against women and girls. To address this issue, a number of legislative provisions have been implemented to ensure that the rights of women are given adequate protection. The *Domestic Violence (Amendment) Act* of 2004 provides for men and women who have been victims of domestic violence to apply for the protection of the courts. This Act broadened the categories of women protected to include not just married women, but also women in common-law and visiting relationships.

30. The *Sexual Offences Act*, which was passed in 2009, repeals the *Incest (Punishment) Act* and certain aspects of the *Offences Against the Person Act* and creates new provisions for the prosecution of rape and other sexual offences, including marital rape, anonymity of complainant in rape and other sexual offences, as well as incest.

31. In addition to the legislative measures, the Government, through the Bureau of Women’s Affairs which is the main state agency responsible for gender issues, has implemented projects aimed at addressing gender-based violence and sexual harassment. These include “**Reducing Gender-based Violence in Jamaica: Increasing Awareness, Enhancing Access to Protection, Strengthening Responses (2008 – 2009)**” which was funded by the United Nations Trust Fund (UNTF), with technical support from the United Nations Development Fund for Women (UNIFEM). Under this project, training was provided to public sector employees, human resource managers and practitioners on the provisions of a (draft) National Sexual Harassment Policy and how to effectively respond to cases of sexual harassment in the workplace. Also noteworthy is the project entitled “**Strengthening State Accountability and Community Action for Ending Gender-based Violence in the Caribbean**” (2009-2010) which is being undertaken with other CARICOM countries and which is aimed at reducing gender-based violence through strengthened and responsive State and civil society actions. It forms part of a broader

strategy to address deeply entrenched stereotypical views regarding issues of power relations and masculinity as it relates to gender-based violence.

32. In order to address gender inequality in governance, particularly at the highest level of decision-making, the Government has partnered with several organizations, locally and internationally, to implement programmes aimed at eliminating discrimination against women in public life. In March 2009, for example, the United Nations Democracy Fund sponsored a project entitled: “**Strengthening Women’s Leadership in Jamaica,**” which was geared towards increasing, improving, and consolidating the presence and influence of women serving on boards and commissions in Jamaica.

33. The Government of Jamaica continues to ensure that legislation related to marriage and family life is not discriminatory to women and guarantees equality of rights and responsibilities between women and men.

34. In addition, women continue to enjoy the same rights as men to conclude contracts and administer property. Both women and men are allowed the same capacity to enter into legal relations and to administer property.

35. There is no legal discrimination against women as they have the right to make **contracts relating to credit, real estate and other property**, as well as other commercial transactions in their own name. In this regard, women have the autonomy to manage their personal affairs, regardless of their marital status.

36. With respect to equal treatment, the laws concerning rights to property and maintenance such as the **Property (Rights of Spouses) Act** and the **Maintenance Act**, respectively, are not gender specific. They confer equal obligations on women and men in legal and common law unions as well as persons in visiting relationships.

37. In the continued effort to address gender inequality, the Women’s Bureau established a *Male Desk* in April 2009 which was officially launched in November 2009 at the observance of International Day for The Elimination of Violence Against Women. The Desk was established to extend the Bureau’s reach and provide opportunities to engage men in the gender discourse. It will also serve as a central point to provide information on men’s health and development, parenting as well as the role of men in the elimination of gender-based violence among other issues. It will also facilitate referral services.

B. Children and Youth

38. The Government of Jamaica, through its policies and programmes has adopted the lifecycle approach from childhood to youth development. The Child Care and Protection Act of Jamaica (2004) defines children as those from 0-18 years of age. However, the specific cohort which is defined as Youth, falls within the age group 15-24 years, as specified in the National Youth Policy. This accords with the Commonwealth Youth Programme’s definition of Youth as 15 -24 years. The Youth population as defined by the United Nations is 15 -18 years.

39. The group 0-24 years which covers children and youth represents 44% of the Jamaican population and therefore has been a focal point in social development programmes. This is a very diverse group with diverse challenges and opportunities and is not homogeneous in any way.

40. Policies and programmes are designed and implemented using a three-pronged integrated approach - Childcare and Protection, Education, and Socio –cultural and economic development. There are various policies and programmes in place and are being implemented by Government Ministries, Agencies and Departments, Quasi governmental groups and civil society groups supported by international partners.

Care and Protection

41. The Act of 2004 seeks to protect children from acts of abuse, neglect, exploitation and ill treatment and also makes provision for educational, physical, religious and emotional needs of the child. Parental and state responsibilities in the welfare of the child are defined in the Act. Applicable penalties for breaches and failure to discharge these duties are outlined.

42. The government, through legislation and various regulations have instituted and strengthened its institutional framework to effectively implement and monitor the care and protection of children. The following are examples of such institutions in place:

- The Child Development Agency (CDA) – The primary government Agency charged with the responsibility for children in need of care and protection particularly those who have been abused, neglected and abandoned and those with behavioural challenges. At the end of 2009 there were just over 5,900 children in state care – Foster care, Family reintegration, at home supervision order, private and government operated children’s Homes and Places of Safety.
- The Office of the Children’s Advocate (OCA) was established pursuant to the Child Care and Protection Act and became operational in 2006. The primary role of the OCA is to advocate for the rights of children, providing legal representation and bringing non-criminal court proceedings on behalf of children or in the best interest of the child. The OCA also receives complaints and conduct investigations into allegations made by or on behalf of children. During 2009 the OCA received just over 300 direct complaints from children and on behalf of children, all of which are being reviewed and many have already been completed.
- The Office of the Child Registry was established in 2007 primarily to receive, record and provide referral services and direction for all complaints and reports on child abuse and neglect. During 2009 the OCR received approximately 6,150 reports. This represented a significant increase over the previous period. One of the contributing factors is the increased advocacy and vigilance on behalf of the rights of children and the success of the public education and media campaign. Reports received are referred to the: CDA, OCA and JCF Centre for Investigation of Sexual Offences and Child Abuse (CISOCA).
- Examples of Other interventions are: The Child Pornography Prevention Act 2009; the Cybercrimes Act 2010; the Sexual Offences Act and the Sexual Offenders Registry.
- There are also several policies and plan of action that have emerged from the various legislation while others are in the developmental phase. Many monitoring systems and various institutions and strategies have been implemented to mitigate the risk to which children are exposed. Despite these initiatives and interventions, the Government of Jamaica and the Jamaican society is challenged by the number of cases that have been outlined, and the Government continues to work assiduously to address these issues in a coordinated manner with involvement of national parenting bodies and other civil society groups and institutions.

43. The National Centre for Youth Development (NCYD) was established in 2000 and is the government department with responsibility to monitor the implementation of the National Youth Policy. The key principles underpinning the work of the NCYD are the rights of the youth to opportunities to optimize their growth and development and the right to participation in decision making that affects their well being.

44. There are currently five Youth Information Centres that are managed by the NCYD and caters exclusively to the needs of young persons, enhancing their access to services and

information through the use of computers and peer mentoring. An additional five centres are under construction in selected urban areas.

C. The Elderly

45. The National Policy for Senior Citizens (persons 60 years and over), adopted in 1997, is designed to ensure adequate protection and care of all senior citizens who constitute 11.0 per cent of the general population, with 54.6 per cent being females. This group remains the fastest growing segment of the population due to declining mortality rates and increased life expectancy, coupled with a declining fertility rate in the population.

46. Through the Policy, the Government will seek to ensure that the basic needs of senior citizens are met and that they are protected from abuse and violence. The Policy addresses issues such as health, education and media, income security and housing. It is currently being reviewed to ensure that it adequately meets the needs of senior citizens in the twenty-first century.

47. The National Council for Senior Citizens (NCSC), an agency of the Ministry of Labour and Social Security (MLSS), has responsibility for overseeing activities and programmes geared towards the implementation of the National Policy for Senior Citizens. The NCSC facilitates and promotes the notion of a healthy and active elderly population with access to opportunities to meet their basic needs.

48. The Government has put several measures in place in an effort to ensure that the rising cost of health care does not lead to an infringement of the rights of the elderly. These include the Health Insurance (NI Gold) and the healthcare subsidies that are offered through the National Health Fund (NHF), the Jamaica Drugs for the Elderly Programme (JADEP) and the Government Pensioners Health Scheme that target the elderly and persons with chronic illnesses. The concept of “elder friendly” health centres has also been instituted and there is an effort to re-orient the health sector on caring for the elderly through the training of various health care workers.

D. Persons with Disabilities

49. To ensure that the rights of persons with disabilities are upheld, the Jamaica Council for Persons with Disabilities - the main government agency with responsibility for addressing the concerns of persons with disabilities - has begun training its staff on the UN Convention on the Rights of Persons with Disabilities and quality customer service delivery, with the second phase of training held in April 2010. Training and sensitization will continue through seminars and workshops across the island and will include persons with disabilities.

50. An Economic Empowerment Project was launched by the Government in 2008 to assist persons with disabilities to establish their own businesses and to become more self-sufficient. To aid in this initiative the Government donated J\$15 million to the project. To date, 574 persons have been slated to benefit from the grant fund.

51. Persons who are hearing impaired are now able to apply for a driver’s license. Staff members of the Island Traffic Authority (ITA) and the Jamaica Constabulary Force (JCF) have received sign language training as part of efforts to equip them with the skills needed to effectively communicate with these persons. A schedule of further training for ITA and JCF staff is being developed.

52. It is also expected that the specific concerns of persons with disabilities will be further advanced through the *National Disabilities Rights Bill* that is currently being

reviewed. The Bill has its contextual base in the *National Policy for Persons with Disabilities* which was developed in 2000 and which seeks to foster an enabling environment so that persons with disabilities can realize their full potential through employment and training.

V. Achievements, best practices, challenges and constraints

A. Achievements and best practices

1. Justice Reform

53. The *Jamaican Justice System Reform Project* was established by the Government, with support from the Canadian Bar Association, to undertake a comprehensive review of the state of the justice system and to develop strategies and mechanisms to facilitate its modernization. This review was conducted between October 2006 and July 2007 through a series of island-wide consultations. The outcome of the process has informed the compilation of the Justice System Reform Task Force Report which is now being implemented as work has commenced or has been finalized with respect to:

- (a) the establishment of a Justice Modernisation Division within the Ministry of Justice to drive implementation of the modernisation plan;
- (b) the establishment of the Court Management Services entity to facilitate more efficient operations of the Court system;
- (c) the modernization of the Office of the Director of Public Prosecutions;
- (d) the implementation of the criminal case management system – Justice Enforcement Management System – to be replicated across all courts;
- (e) the development of a policy of Restorative Justice;
- (f) the establishment of a Legal Service Division within the Ministry of Justice;
- (g) increasing staffing positions in the Supreme Court Registry;
- (h) strengthening staffing positions in the Legal Reform Department; and
- (i) court expansion.

2. Health

54. Life expectancy, which was 72 years in 2007, is comparable to that of high income countries. One area in which inroads have been made is in respect of addressing the HIV/AIDS pandemic. While there is room for improvement in tackling stigma and discrimination, progress has been made in increasing access to anti-retroviral drugs, resulting in a significant reduction in mother-to-child transmission and deaths due to AIDS⁷. Consequently, Jamaica is on track for combating HIV/AIDS and halting and reversing the incidence of malaria and tuberculosis (Goal 6 of the MDGs).

55. Through the Jamaica National HIV/AIDS Policy and Strategic Plan, efforts are being made to strengthen the national response to HIV by implementing strategies to

⁷ National Report of Jamaica for the 2009 Annual Ministerial Review of the UN Economic and Social Council on *Progress Towards the Achievement of the Internationally Agreed Development Goals, including the MDGs*.

achieve universal access to prevention, treatment, care and support. These strategies also include:

- upgrading prevention services; increasing access to treatment for People Living with HIV (PLWHIV); reducing stigma and discrimination through sensitization and education and expanding HIV testing programmes; and preventing mother-to-child transmission; and
- the development of a National HIV/AIDS Workplace Policy and various related sector policies

56. Jamaica ranks high among developing countries in the health status of its population as a result of a well developed primary health care (PHC) infrastructure. This can be attributed in part to the decentralization of the management of health service delivery in accordance with the *National Health Service Act, 1997*. The Act repealed the *Hospital (Public) Health Act* which regulated the functioning of individual hospitals under the direct control of the Ministry and established the legal framework for bringing all public health care facilities under the management of four (4) Regional Health Authorities.

57. As noted previously, Jamaica is among a number of developing countries that have abolished user fees at public health facilities for services being accessed by public patients. The provision of subsidized drugs through the National Health Fund (NHF), established in 2003 is also another important achievement. The NHF utilizes a creative model of taxation through an excise tax on tobacco and is considered a health financing best practice⁸. The introduction of new cadres of health workers such as the community health aide (CHA), nurse practitioners, psychiatric aid, pharmacy and lab technical assistants, peer educators, contact investigators as well as social workers is also considered a best practice.

58. Although suspended, the Hospital-Based Child Abuse Mitigation Project, which was established by the Ministry of Health in collaboration with UNICEF from 2004 to 2008, was considered a best practice model - the only of its kind in the English-speaking Caribbean⁹. The project sought, inter-alia,

- to develop and implement a hospital-based model to identify and refer victims of violence;
- to improve parenting skills and conflict resolution; and
- to develop and implement an intervention model within the child's environment (home, school, church).

59. Although the project was put on hold due to human and financial constraints, it was successful in meeting the objective of identifying and referring victims of violence. There are plans to have it restarted and replicated in other hospitals.

60. The Early Childhood Commission and the Ministry of Health have been working together to develop a Child Health and Development Passport for Jamaica under the National Strategic Plan for Early Childhood Development. The Passport (CHDP) will be used to monitor the growth and development in children from birth to seventeen (17) years as well as provide anticipatory guidance for parents/guardians.

⁸ Ibid

⁹ Ibid

3. Education

61. The country has made progress in reforming the education sector. Since 2009, the Government has embarked on a Competence-Based Transition Policy that is designed to ensure that students transitioning from the primary to the secondary level are capable of doing so based on their demonstrated skills and competencies.

62. Human Rights is addressed and recognised as an important aspect of the educational curriculum. Among the issues to which children are exposed are the rights of the child, the rights and responsibilities of employers and employees, as well as the rights and freedoms of citizens as contained in the Jamaican Constitution.

4. Police Reform

63. In an effort to combat increasing levels of crime and violence, and diminished public confidence in the police, the Government of Jamaica undertook to modernize the law enforcement infrastructure through a comprehensive Strategic Review of the Jamaica Constabulary Force (JCF) in 2008. The Strategic Review examined the policies, operations and performance of the JCF, and made recommendations aimed at establishing internationally accepted policing standards. A strategic review panel, comprising local and international experts, developed a set of recommendations around five broad strategic areas to address areas of deficiency and to transform the JCF into a modern police service. These include:

- transforming the culture of the organization;
- strong anti-corruption measures;
- a system of accountability;
- an effective leadership and management framework; and
- a professional service environment.

64. A Strategic Review Implementation Team was established within the JCF to ensure the implementation of the recommendations, while an oversight mechanism was established in the Ministry of National Security to monitor and evaluate the progress achieved in implementing change and to communicate the progress of implementation to the public in order to maintain transparency throughout the implementation process.

65. Several activities have so far been completed. Of particular note are:

- The development and execution of several culture change workshops, with early indications that there is increased awareness and acceptance of change among recruits;
- The implementation of anti-corruption policies and strategies and other measures to tackle corruption, including the establishment of an Anti-Corruption Branch within the JCF and the launch of the 1800-CORRUPT line in January 2009; the security vetting initiative to ensure a leadership free of corruption; and the development of a Secondary Employment and Conflict of Interest Policy;
- The roll out of community based policing (CBP) across the JCF, the development of a CBP training manual and the deployment of 183 persons to strengthen community policing in 19 geographic divisions. Currently, there are 57 communities with assigned CBP officers and/or patrol teams who function as first contact and liaison for police and partner services;
- Greater efforts being made to improve the delivery of ethics, human rights and use of force modules in training programmes to, *inter alia*, reduce the number of

complaints of police excesses and restore public respect and trust for police officers;
and

- The development of policing plans and the establishment of indicators and targets, with quarterly evaluations currently being done.

5. Human Trafficking

66. In keeping with its commitment to providing protection and support to victims of human trafficking, the *Trafficking in Persons (Prevention, Suppression and Punishment) Act* was adopted in 2007 to give effect to the Protocol to Prevent, Suppress and Punish Trafficking in Persons. A National Task Force against Trafficking in Persons (NATFATIP) was established in 2005 comprising representatives from both governmental and non-governmental organizations. It is responsible for, *inter alia*:

- increasing sensitivity to trafficking in persons through public education;
- facilitating the training of police officers, customs and immigration officials, the judiciary as well as diplomatic and consular officers;
- recommending amendments to key legislation that are likely to aid in the prevention of trafficking in persons, prosecution of offenders and enhance the provisions to protect victims; and
- establishing protocols for intervention to help victims of trafficking.

67. To enforce the law, a Trafficking in Persons (TIP) Unit was established in the Organised Crime Investigation Division of the Jamaica Constabulary Force. The Unit also works in collaboration with the Ministry of Labour and Social Security to screen applications for work permits and to conduct follow-up investigations to deal with any breaches to the permit granted.

6. Refugee Policy

68. In keeping with its international obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the Government of Jamaica, in July 2009, developed a Refugee Policy. The Policy establishes procedures for managing the refugee status determination and appeals process as well as it takes into consideration the Handbook on Procedures & Criteria for Determining Refugee States, prepared by the Office of the UN High Commissioner for Refugees.

69. A Refugee Eligibility Committee which was established by the Policy, provides the institutional base for the assessment and determination of refugee status.

B. Challenges and Constraints

1. Public Security

70. Despite its achievements, Jamaica is confronted by serious social and economic challenges. A major area of concern is that of the number of reported murders which increased by 3.3 per cent in 2008¹⁰. The murder rate was estimated at 60.2 per 100,000 in 2008 and 62.4 per 100,000 in 2009. The situation is compounded by the link between drug trafficking, the illicit proliferation of small arms and the presence of criminal gangs. In the Jamaican context, the existence of criminal networks is supported by the activities of

¹⁰ Source: Economic and Social Survey of Jamaica, 2009.

sophisticated criminal organisations within and outside the region and is enabled by the porous nature of our borders. The impact of the “guns-for-drugs” trade on Jamaican life is evident as 76.9 per cent of all homicides committed in 2009 feature the use of a firearm. Gang-related activities were cited as the primary motive for 48.1 per cent of reported murders¹¹. It is estimated that injuries caused by violence consumed about 12 per cent of the country’s total health expenditure in 2006¹².

71. In the face of extraordinary challenges to the maintenance of law and order, in May 2010, State of Emergency limited was imposed in sections of the capital, and security operations conducted in West Kingston, specifically in the Tivoli Gardens and Denham Town areas. The state of emergency was imposed to facilitate the efforts of the security forces to combat criminal activity which had become a serious threat to institutions of the State.

72. The operation was precipitated by intelligence gathered by the security forces indicating that heavily armed men opposed to the decision to issue the authority to proceed with committal hearings for the extradition of Mr. Christopher Coke to stand trial in the United States on drugs and gun trafficking charges, were preparing to attack members of the security forces. Intelligence also indicated that criminal elements in other communities intended to launch attacks on the security forces. This was corroborated by the fact that a number of police stations in and outside of Kingston were attacked by armed men using guns and Molotov cocktails. Two police stations were set on fire and extensively damaged and two police officers were shot and killed. It should be noted that improvised explosive devices, such as booby traps and bottle bombs, were used by criminals to fortify strategic points in the community to impede access by the security forces into the community.

73. At the end of the period, 23 to 26 May, 73 civilians were killed. Following the security operations, the Government immediately launched an extensive investigation into the military/police operations carried out during this period, including the circumstances of the civilian deaths. The Office of the Public Defender, an independent commission of Parliament charged with investigative powers on behalf of the citizens of Jamaica, established an office in the area to receive complaints from persons who witnessed or experienced violations of fundamental rights on the part of the security forces. The Complaints Division, a unit of the Jamaica Constabulary Force established by an Act of Parliament, also set up an office in the area of operation with a specific mandate to investigate complaints of residents against alleged breaches committed by police personnel. Following identification of the victims, post-mortem examinations were conducted in the presence of the Public Defender and an independent pathologist from overseas observed the proceedings.

74. Violence and anti-social behaviour is also a problem in the education system. For 2009, the Ministry of Education increased its efforts to address the situation by embarking on several behavioural management programmes.

75. Challenges also persist in respect of allegations of abuses, including extrajudicial killings, by agents of the State. In 2009, the Police Public Complaints Authority, an independent agency with the power to investigate allegations of misconduct filed by members of the public against members of the Jamaica Constabulary Force (JCF) and its Auxiliaries, received a total of 391 complaints, 4.5 per cent more than in 2008. Of this amount, 123 were disposed of with 60.2 per cent could not be substantiated, 27.6 per cent

¹¹ Ibid.

¹² National Report of Jamaica for the 2009 Annual Ministerial Review of the UN Economic and Social Council on *Progress Towards the Achievement of the Internationally Agreed Development Goals, including the MDGs*.

referred to the Director of Public Prosecutions for ruling and 5.7 per cent referred to the Commissioner of Police for action or withdrawn¹³. A total of 318 shooting incidents were also reported in 2009 to the Bureau of Special Investigations - the arm of the JCF that investigates allegations of police excesses.

76. The Government acknowledges that the situation in prisons and lock-ups remains far from satisfactory. Many of the challenges associated with the correctional services were highlighted during the visit to Jamaica in February 2010 by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Efforts are being made to improve the living conditions of inmates in all institutions. An extensive repair and an ongoing maintenance programme which includes the retrofitting of cells and sanitary convenience is in place. There is also closer monitoring of inmate/staff relationship and enhanced training opportunities for prison staff to reduce the number of incidents of abuse as well as of conflicts between staff and inmates.

77. The Government is also working to reverse the current practice of the incarceration of children in police lock-ups and to implement measures to protect children in juvenile correctional facilities, in keeping with recommendations emanating from the Commission of Enquiry on the Armadale incident in which 7 wards of the state lost their lives in a deadly fire in May 2009. These recommendations include ensuring that housing facilities correspond with international standards; the identification of additional space to properly house wards; the development of procedures, for example evacuation procedures, in the event of emergencies; the expansion of rehabilitation programmes to include structured long term therapeutic and cognitive programmes; and training for Correctional Officers at juvenile institutions.

2. Sustaining Development Achievements

78. In respect of the Millennium Development Goals (MDGs), the country is unlikely to meet targets on gender equality, the empowerment of women, reducing biodiversity loss as well as achieving significant improvement in the lives of inner-city residents. Additionally, although the country has achieved a reduction in absolute poverty and universal access to primary education, there are challenges in providing the necessary means to ensure universal access to secondary education, improving the quality of the outputs from the system, ensuring a safe teaching/ learning environment through the management of anti-social behaviour in schools and the availability of adequate financial resources. The domestic and global economic climates also have the potential to reverse the positive gains realized in respect of reducing absolute poverty.

79. It should be noted, however, that Jamaica has comparatively low child and maternal mortality rates, making MDG target of reductions, by three quarters, somewhat difficult. Maternal deaths from direct causes have been halved, but deaths from indirect causes have increased. Shortages in midwives have also negatively impacted resources. In addition, there has been an increased prevalence of lifestyle-related chronic diseases such as cardiovascular diseases, diabetes and obesity.

80. Jamaica is vulnerable to natural disasters, the frequency and intensity of which have been increasing due to climate change. In fact, Jamaica has been hit by two major hurricanes in two consecutive years and by four major storms in five years. Such events negatively impact achievements realized to date because of the severe destruction to infrastructure, life and property.

¹³ Source: Economic and Social Survey of Jamaica, 2009.

81. Sustained progress, therefore, will entail continued and concerted efforts, including through close cooperation with international development partners.

VI. National priorities and commitments

82. In order to effectively respond to some of the challenges highlighted in previous paragraphs and advance the promotion and protection of the human rights of each citizen, there are several key priorities that the Government intends to pursue in the medium to long-term.

A. Crime Prevention and Security Strategies

83. Jamaica has adopted a multi-faceted approach to tackling crime and violence. The Government has introduced new pieces of legislation to strengthen the nation's law enforcement capabilities. These include anti-gang legislation to put pressure on criminal networks. In addition, whistleblower legislation is being drafted that would encourage citizens to give information about an act of improper conduct which occurs within the organization in which that person is employed by providing them with the requisite protection from prosecution and victimization. Legislative reform is also being pursued, aimed at granting to the security forces greater opportunity and ability to investigate, apprehend and prosecute criminals.

84. As noted previously, emphasis is also being placed on enhancing the training being offered to security personnel, with a special focus on the fundamentals of ethics, use of force and human rights. Since September 2009, a total of 3,064 frontline officers across the Jamaica Constabulary Force have been exposed to training in this regard. The training projection for May to December 2010 is 2,304 frontline officers. Training in the area of human rights is provided in collaboration with NGOs such as the Jamaica Independent Council for Human Rights, Amnesty International and Jamaicans for Justice. Human rights are also thematic to all areas of firearm training. The overall objective is to reduce the number of complaints of police excesses and restore public confidence in and support for the police.

85. The above efforts are complemented by several social intervention programmes which are donor funded and aimed at providing, *inter alia*, strategic support to government and civil society partners in coordinating security, justice and armed violence prevention initiatives. These include the Citizen's Security and Justice Programme (social marketing and community capacity building), the Jamaica Violence Prevention Peace and Sustainable Development Programme (the design and implementation of armed violence prevention policies and programmes), the Community Security Initiative (focused on community transformation, primarily those emerging from domination by criminal gangs) and the Poverty Reduction Programme (poverty alleviation through sustainable growth with an emphasis on the promotion of community safety).

Peace Management Initiative (PMI)

86. The eight year-old organization, is an early intervention mechanism, which works proactively to prevent conflicts from rising to the level of violence, and aims to strengthen civic organizations that provide stability, sustainable development, security and pride within inner-city communities.

87. The process involves a variety of strategies; from the deployment of mediators in the short term, to the long-term support and development of community organizations and

economic life. The PMI includes members of both political parties (JLP and PNP) as well as civil society representatives.

B. Justice Reform

88. In addition to the measures undertaken by the Police Force to address the issue of corruption and allegations of abuse by state agents, the *Independent Commission of Investigations Act*, establishes a Commission of Parliament to undertake investigations concerning actions by members of the security forces and other agents of the State that result in death or injury to persons, or the abuse of the rights of persons. The Independent Commission will replace the Police Public Complaints Authority and the Jamaica Constabulary Force's Bureau of Special Investigations. The Office of the Special Coroner is being established to conduct inquests in cases where a citizen dies at the hands of agents of the State.

89. Efforts are also being made to establish the Office of the Special Prosecutor for Corruption that will have as its sole and primary mandate the investigation and prosecution of acts of corruption.

90. Work is also being undertaken in respect of reforming the libel laws to make it easier to expose those involved in wrongdoing at all levels in the society.

91. Measures are being implemented to encourage speedy trials. These include the provision of additional court rooms; increasing the number of Supreme Court Judges, Masters, Resident Magistrates, Prosecutors and other staff in the Supreme Court and the Office of the Director of Public Prosecutions; and amending the Jury Act to, *inter alia*, widen the pool from which jurors can be selected. Another tool to be used in reducing case backlog is the application of Restorative Justice Practices.

92. Additionally, although more criminal cases are being disposed of (21.3 per cent increase for the period 2008/09 over 2007/08)¹⁴, there continues to be a delay in respect of the speedy conclusion of trials and clearing the backlog in criminal cases.

93. The increased use of mediation is also being targeted to reduce case backlogs. It is now obligatory, with the revision of the 2002 Civil Procedure Rules, for civil cases to be referred to mediation. Support to the Dispute Resolution Foundation (DRF), the Ministry of Justice's main affiliate entity for the delivery of alternative dispute resolution, has been increased to allow for greater access to mediation which facilitated 832 mediations across the island in 2009. Improved court reporting and the exposure of Judges, Resident Magistrates and other justice sector personnel to training in criminal case management are also expected to have a positive impact.

94. Other mechanisms within the Justice system which protects the human rights of Jamaican citizens, include the Office of the Public Defender which was established by the Public Defender Act passed in 1999 and which came into effect in April 2000. This office was established with the jurisdiction to investigate circumstances where it is alleged that a person's constitutional rights have been violated. It is significant to note that the complainant does not have to be a citizen of Jamaica or live in Jamaica but the matter complained about must have occurred in Jamaica.

95. The Office of Political Ombudsman was established in 2002 and has the responsibility to investigate complaints made by person(s) suggesting that the actions of a

¹⁴ A total of 512 criminal cases were disposed of in 2007/08 compared to 621 in 2008/09 (Source: Ministry of Justice).

political party breaches an agreement, code or arrangement in force between or among political parties in Jamaica.

C. The Protection of Children in State Care

96. As at February 2010, there were 395 juveniles in state correctional institutions (correctional and remand centres). Of this amount, 317 are boys and 78 are girls. In addition, there were 68 children (64 males and 4 females) in police lock-up. To respond to these and other concerns, including those arising from the Armadale Enquiry, and to ensure that children placed in correctional facilities will be exposed to appropriate programmes to address their behavioural challenges and development needs, several new measures will be undertaken as described below.

97. An audit of all juvenile correctional institutions will be conducted and new juvenile remand and correctional centres will be established. There will also be a review of the recruitment policy for correctional officers, the staffing requirements at correctional institutions as well as a review of the training curriculum for officers assigned to juvenile facilities. In addition, a review is being carried out in relation to juvenile correctional and remand facilities, now under the jurisdiction of the Correctional Services, being placed under the Child Development Agency. A National Inspectorate will also be established to monitor conditions within child care facilities and to ensure adherence to the Child Care and Protection Act. The Ministry of National Security and the Department of Correctional Services, as part of a medium-to-long term initiative, will be developing a Youth Offender Strategy aimed at identifying and implementing new approaches to help children who are deemed to be out of control.

D. Education

98. The Government will continue to focus its attention on transforming the education system to improve the quality of education. The proposed Compulsory Education Policy (CEP) is one of the measures to be employed in this regard. It will seek to address such issues as: i) mandatory attendance; ii) regulation of programmes; iii) raising students' performance levels to international standards; and iv) preparing students for the world of work. Components of the policy include:

(a) the National Education Trust (NET) which is focused on providing critically needed school spaces;

(b) the Universal Secondary Education (USE) programme which is focused on providing at least five years of secondary education for all students; and

(c) the Career Advancement Programme (CAP) which is focused on providing opportunities for all students (ages 16-18) to identify, understand, choose and prepare for careers and occupations of their choice.

99. In respect of special education for children who are visually and hearing impaired; mentally challenged; physically and learning disabled; gifted and talented, there is a draft National Policy on Special Education. The Policy will guide the implementation of the special education mandate of making adequate and appropriate provisions that will ensure access and equity in the planning and delivery of special education services. In addition, provision is being made for each school to have a Special Educator on staff. Through the Special Education Unit in the Ministry of Education and support from other state agencies, budgetary allocations are made to support Special Education.

E. Health

100. Priorities for the health sector include maintaining the health gains achieved to date and sustaining the abolition of the user fee policy. In keeping with this broad objective, particular attention will be paid to reducing the cost of and improving the quality of delivery services, strengthening surveillance systems, improving health promotion and education, and expanding public/private partnerships.

101. In an effort to reduce the stillbirth rate, infant mortality and provide for the healthy development of the child, priority attention will be given to implementing *the Strategic Plan on Safe Motherhood Programme (2007 – 2011)* which focuses on four specific areas: an enabling policy environment, quality of care, surveillance and health promotion.

102. Another specific area which will also be given special attention is that of mental illness. To this end, the Ministry of Health has developed a five year strategic plan to drive the improvement and the implementation of mental health services for the period 2009-2014. Examples of some of the elements to be addressed are education, community services, child and adolescent health services; and information systems.

VII. Expectations of the State

103. The government of Jamaica is cognizant of the gaps and deficiencies in the institutional framework as it relates to the promotion and protection of human rights. Technical assistance is required, particularly in the area of capacity building, to focus on:

- structured multi-sector consultations
 - human rights related training, including human rights education, and
 - disaggregated data collection.
-