

**INTRODUCTORY STATEMENT**

by

**H.E. Wayne McCook, Ambassador/Permanent Representative of Jamaica  
to the Office of the United Nations**

to the

**30<sup>TH</sup> SESSION OF THE UNITED NATIONS THE HUMAN RIGHTS COUNCIL**

at the

**ADOPTION OF THE REPORT OF THE UNIVERSAL PERIODIC REVIEW OF  
JAMAICA (2<sup>ND</sup> CYCLE)**

**Geneva, 25<sup>th</sup> September, 2015**

**Thank you.**

**Mr. [Vice-] President**

**Members of the Human Rights Council**

**Observer Delegations**

**Members of Civil Society**

**Ladies and Gentlemen**

I am pleased to be here today to participate in the adoption of the report of the second cycle of Jamaica's Universal Periodic Review (UPR).

On 13<sup>th</sup> May, 2015, Jamaica presented its second cycle report to the 22<sup>nd</sup> Session of the UPR Working Group. During the interactive dialogue, 168 recommendations were made, the majority of which were accepted by Jamaica, including some which the Government regarded as having been already implemented or in the process of being implemented.

Jamaica has submitted its final response to the recommendations received in May, including those that the Government had declared would have required further consideration before the formal adoption of the UPR report by this Session of the Human Rights Council. In all, Jamaica has accepted 92 recommendations in whole and 2 recommendations in part, including 68 that the Government considers as having already been implemented or as being in the process of implementation.

## **Scope of International Obligations**

Jamaica is a Party to seven of the nine core international human rights instruments.

The Government of Jamaica has a longstanding policy that reflects our very serious commitment to the country's obligations to implement international treaties to which we are Party in good faith. As such, we do not bind ourselves and our citizens to any treaty, unless or until we are satisfied that the domestic framework to give effect to that international treaty will stand up to national scrutiny, and the standards set by that treaty.

This fundamental approach has informed our responses to those recommendations relating to the accession to various treaties; for example, the Convention against Torture, the International Convention for the Protection of All Persons from Enforced Disappearances, as well as the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and ILO Conventions 169 and 189 - which we have noted; and the Rome Statute of the International Criminal Court and the Optional Protocol to the Convention on the Rights of Persons with Disabilities –which we have accepted as being already in train. Jamaica has no plans to accede to any of the Optional Protocols of the ICCPR at this time. The longstanding *de facto* moratorium on the death penalty is still in effect.

Mr. [Vice-] President,

Let me now address our responses to recommendations across various thematic clusters.

First, on **Institutional and Human Rights Infrastructure and Policy Measures:**

Jamaica confirms its acceptance of those recommendations related to:

- The establishment of a National Human Rights Institution, using a “hybrid model” in which we will be expanding the role and functions of an existing entity;
- Human rights training and sensitisation for the Jamaica Constabulary Force (our Police Force) and the Judiciary – this has already been implemented through an ongoing set of measures, which we constantly seek to improve;
- Human rights education for all citizens, through various mechanisms including infusion in the school curricula.

With respect to those recommendations urging the Government to “recognise” and “protect” human rights defenders; we must reiterate that, there is no basis for

stating that human rights defenders are at risk in Jamaica. Full protection is afforded to these persons as citizens under the law. Indeed, Jamaican human rights advocates are extremely active, openly and boldly engaged in fearless advocacy, and have contributed and continue to contribute positively to the development of the Jamaican human rights architecture.

### **Cooperation with human rights mechanisms and treaty bodies**

Jamaica confirms its acceptance of the recommendation regarding the creation of an online system to track international recommendations, including those accepted by the State under the UPR mechanism. As a Small Island Developing State, with resources that are often stretched quite thinly; such a system would, if effectively implemented, go a far way in assisting us with both domestic implementation and reporting to international bodies. Jamaica has, in the past, joined other States in calling for greater collaboration among international treaty bodies, with respect to the reporting obligations, which are significantly onerous especially for SIDS. And while Jamaica has managed to submit several reports, since our last UPR, to five UN treaty bodies, we were criticised for tardiness in some instances. This is a classic effect of resource constraints, in spite of the Government's unyielding commitment to honour its reporting obligations,

### **Cooperation with special procedures**

As stated in our UPR, Jamaica is not opposed to accommodating visits of Special Rapporteurs; however these are and will continue to be considered on a case-by-case basis. We are, therefore, not in a position to issue standing invitations to Special Rapporteurs, irrespective of how much we value their work and the issues for which they advocate. In the case of agreed visits, it is critically important that the Government be given adequate notice, through established diplomatic channels, to ensure that necessary arrangements are in place for successful visits, in accordance with mutually-agreed timelines.

We also place on record, our recommendation to this Human Rights Council, that a mechanism be put in place that allows for the sharing of information among the various Human Rights bodies and procedures, as often there are overlapping requests which are inefficient and unduly stretch the limited resources of many members.

### **Equality and non-discrimination**

#### **General**

Jamaica has accepted the majority of recommendations or parts thereof, which encourage the Government to combat or to continue to combat discrimination on any grounds and in all spheres of life, and to act in furtherance of the protection of

the rights of vulnerable persons in the society, including women, children and the disabled. The LGBTI community is naturally included as part of this thrust.

Jamaica has an agglomeration of legislation, policies, strategies and measures in place at various levels which derive from the Constitution and which, collectively, form an effective machinery that provides all Jamaicans redress from discrimination of any kind; we are, therefore, not in agreement with those recommendations that suggest, in whole or in part, that the only way to effectively fight discrimination is through a single anti-discrimination law.

Flowing from the protections and recourse to redress offered under Jamaican Constitution and the Charter of Fundamental Rights and Freedoms (2011), Jamaicans may and do seek redress in various sectors, primarily employment, education and health. The Industrial Disputes Tribunal (IDT), established by the Labour Relations and Industrial Relations Act, 1975; adjudicates disputes between unions, workers and employers, but also has the broader mandate to adjudicate individual cases of alleged wrongful dismissal. The IDT has made many rulings over the years in favour of individual citizens; and its rulings are binding and final. In addition, the Ministry of Labour has a complaints mechanism for individuals who feel that they have been unfairly treated by their employers – and actively investigates and rules on these cases, even where the employee may not be able to perceive a rationale for the alleged unfair treatment. The Ministry of Education also has a complaints mechanism for parents and children who feel that they have been unjustly treated by school administrations; the Ministry regularly investigates and rules on cases that arise because of expulsions, suspensions, religious diversity, and decisions by school boards. The Ministry of Health also has a complaints mechanism which is used quite extensively by persons who feel that they have been unjustly treated – for whatever reason – by a particular health facility. The Police Complaints Authority receives all complaints from persons who feel that they have been unfairly treating by members of the Police Force and the Office of the Public Defender receives complaints from individuals regarding any government entity.

One important aspect of the mechanisms I have mentioned is that they allow ordinary citizens to seek and obtain justice, usually in a reasonable period of time and without needing to retain counsel

### **Women and Children**

The Government of Jamaica condemns all forms of discrimination and negative stereotypes affecting women and children, and is pursuing appropriate policies to eliminate these phenomena. A gender equality framework is currently in place for the Government's policies, programmes, and plans, in keeping with the international legal requirements, international human rights obligations,

commitments, and principles. In this context the Government of Jamaica is undertaking the following measures:

- acceleration of legal and constitutional reform to protect against sex discrimination; sexual harassment;
- the review and amendment of legislation geared towards greater legal protection for women and girls;
- ongoing legislative reform relating to women to ensure that women receive adequate redress under the law; and
- introduction of new legislation to provide protection and remedies for women and girls.

Jamaica is a Party to the ***Convention on the Rights of Persons with Disabilities (2007)***; ***Convention on the Elimination of All Forms of Discrimination (CEDAW, 1984)***; ***Convention on the Rights of the Child (1991)***; ***Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women - Belem do Para Convention (1994)***, and fully supports the ***Beijing Platform for Action (BPFA, 1995)***; ***Millennium Development Goals (MDGs, 2000)***; and agreed Outcome Documents of international and regional meetings on gender equality.

I will now share with you, details of some of the relevant domestic legislation that promote gender equality and the protection of women, girls, boys and men:

*The Charter of Fundamental Rights and Freedoms 2011*

Explicitly prohibits gender discrimination, and provides for the right to freedom from discrimination on the grounds of being male or female.

*The Sexual Offences Act, 2011*

- Repeals the Incest (Punishment) Act and certain sections of the Offences against the Person Act which dealt with offences against females;
- Strengthens definition of the offence of rape;
- Creates other sexual offences such as grievous sexual assault and marital rape;
- Defines a child as a person under the age of eighteen (18) years of age;
- Provides for the establishment of a Sex Offender Registry to house a database among other matters
- As part of Government's routine review of legislation, there are proposals for the Act to be made more gender-neutral, in recognition of the concept that all individuals (women, men, girls, and boys) are equal

before the law. Proposals have also been made for the law to be amended to remove the restrictive conditions for marital rape so that all marital rape be criminalized. This matter is currently under review;

*The Child Care and Protection Act, 2004*

- Covers issues affecting children directly as victims, or indirectly (or potentially) as children in need of care and protection;
- Addresses cases of child abuse;
- Makes provision for mandatory reporting;
- Creates a Children's Advocate and a Children's Registry.

*The Domestic Violence Act, 1995 (Amendment) 2004*

- Provides for enhanced protection for victims of domestic violence and abuse;
- Applies to both spouses and *de facto* (common law) spouses;
- Makes provision for persons in visiting relationships;
- Allows for Occupation and Ancillary Orders, giving the victim exclusive use of a home, furnishings and personal effects;
- Allows Courts to issue Protection Orders, keeping the accused away from the home, work or school of the victim;
- It should be noted that Protection Orders can be made on behalf of women, children or men who are affected by violence within the home.

*The Offences against the Person Act, 2010*

- Is the primary source of sexual offence prohibitions and penalties in Jamaican law;
- Has a highly gender-specific approach to sexual offences;
- Includes a range of offences related to issues such as the exploitation or defilement of women or children, e.g. procuring a girl to be engaged in prostitution, coerced sex, living on the proceeds of prostitution, soliciting for immoral purposes, causing a child to live in a brothel, having sexual intercourse with a woman who is overpowered by a drug or with a mentally disabled female.

*The National Disabilities Act, 2014*

- Promotes full and equal enjoyment by persons with disabilities, of privileges, interests, benefits and treatment, on equal basis as others;
- Establishes the Jamaica Council for Persons with Disabilities;
- Addresses employment of persons with disabilities and includes non-discrimination provisions and an obligation on the employer to make adjustments to the workplace to ensure that the employee is not at a disadvantage.

Jamaica has accepted the recommendation that speaks to ensuring that women and girls have effective access to justice, including through the provision of legal aid. This is reflected in Jamaica's *Legal Aid Act*, through which legal aid is available to both men and women and access to legal services is provided through the Legal Aid Council. Legal aid is offered to persons facing criminal charges, not to victims.

In addition, legal aid services in non-criminal matters, such as to assist in family court proceedings, are primarily provided by the legal aid clinics in Kingston and Montego Bay as well as the Norman Manley Law School at the University of the West Indies in Kingston.

A number of other civil society organizations that operate independently provide legal advice and legal aid in civil and criminal matters, including those related to sexual and gender-based violence. For example, *Woman Inc.*, which is one of the leading women's NGOs in Jamaica, is also the only organisation that specifically provides legal aid services to women who use its services. Legal pro bono services are offered by some NGOs, such as the *Independent Jamaican Council for Human Rights*, as well as private attorneys.

## **LGBTI**

Jamaica continues to take steps to end prejudice and stigmatisation affecting all Jamaicans, including LGBTI persons, emphasising mutual respect among all Jamaicans, adherence to the rule of law and continuing in a strong historical tradition of freedom of expression and opinion, however divergent or bluntly expressed. We do not accept any recommendation which seeks to typify the attitudes of Jamaican society generally as "homophobic".

The Government of Jamaica has consistently condemned all acts of violence, against all persons. As part of its approach to the decades-old problem of violence that has spared no community, or group of persons; the Government has been a leading voice in the Caribbean region, advocating for a regional, hemispheric and global response to the epidemic of violent behaviour that has affected Jamaica and other countries in the Americas.

## **Right to life, liberty and security of the person**

The Minister of Justice, in his presentation and dialogue with the UPR Working Group in May, dealt quite extensively with the vast range of issues involving the Police, Judiciary and Conditions in Prisons. I will not repeat these here, except to summarise the current situation as being one where legislative and administrative reforms have significantly improved the operations of State actors in these areas and positively impacted the dignity and human rights of Jamaican citizens. We have therefore, no difficulty, in accepting many of the recommendations that spoke to reforms in these areas.

We have also accepted most of the recommendations that addressed implementation or enhancement of social and economic rights and conditions for Jamaican citizens; such as poverty alleviation, access to health services - including for persons suffering from HIV/AIDS - education, climate change amelioration, child labour, social protection, and water and sanitation.

Like many countries, Jamaica is already grappling with the phenomenon of **street children**; who are properly classified by the *Child Care and Protection Act* as being in need of care and protection. Wherever identified, the agencies of the State collaborate to investigate, intervene and integrate street children with their families. Depending on the circumstances, a series of programmes offered under Jamaica's social protection system are matched with individual needs and applied accordingly. Where re-integration is not possible or other vulnerabilities are identified, the matter is brought to the attention of the Courts and the child placed in the care of the State.

Several ongoing initiatives, involving multiple agencies and bilateral and multilateral partners, provide services to street children and data-collection for Government agencies to strengthen the response framework.

Jamaica appreciates the spirit of the recommendations made regarding **trafficking in persons**, and has accepted most of these proposals. I must emphasise, however, that there is a distinction between adults, including foreigners, who are knowingly and willingly engaged in prostitution, and persons who are victims of trafficking including those forced to work as prostitutes. We have spared no effort in addressing trafficking within our jurisdiction. These efforts were detailed in our written and oral submissions to the UPR working Group. One highlight was our establishment of a Shelter for victims of trafficking, which has been operational since 2013.

Owing to the clandestine nature of this crime, it has been difficult to secure convictions, as victims and witnesses are often reluctant to come forward to testify; and, understandably, as some of the victims come from other countries, they prefer to simply return home, rather than wait to participate in a trial in Jamaica. Currently, there are seven cases before the Courts.

We have noted the partial recommendation urging the **decriminalisation of abortion** and can confirm that in Jamaica, abortion is permissible on certain medical grounds.

While we have accepted several of the recommendations regarding the Independent Commission of Investigations (**INDECOM**), which investigates cases of alleged excessive use of force; we regard as redundant, the recommendation to amend the Coroner's Act to strengthen INDECOM's powers. As currently written, the *Coroner's Act* gives the Coroner (or the Special Coroner), the authority to deem



anyone an interested party in a Coroner's Inquest. Should INDECOM have an interest in a matter before the Coroner's Court, it simply has to indicate this interest to the Coroner.

With respect to the recommendations regarding *corporal punishment*; this has been abolished in early childhood institutions, children's homes and other arranged alternate living spaces such as Foster Care. Appropriate measures are being taken to ensure that the use of corporal punishment is discontinued in Jamaican schools. The *Child Care and Protection Act* affords protection for all children from abuse.

Mr. [Vice-] President,

I conclude this first set of remarks by reiterating that Jamaican Government remains committed to the implementation of the recommendations of the Universal Periodic Review, and will endeavour to uphold our demonstrated tradition of respect for the rule of law.

I reiterate my Government's gratitude to our many bilateral and multilateral partners, who have offered sage advice, technical and other assistance to increase our capacity to honour our obligations to the people of Jamaica.

I thank you.

