



UNITED NATIONS

Press Release

UN Special Rapporteur presents preliminary findings on his mission to Jamaica

19 February 2010

KINGSTON - The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, issued the following statement:

"I would like to thank the Government of Jamaica for inviting me to conduct a fact-finding mission from 12 to 21 February 2010 and for its full cooperation during the visit. I am grateful to all my interlocutors, including senior State officials, representatives of civil society, detainees and victims of torture and ill-treatment for their willingness to share their experiences with me. I would also like to express my gratitude to the Resident Coordinator and the United Nations Country Team for the assistance provided. A list of places visited so far and meetings held is annexed to this statement. The mission will be completed on Sunday, 21 February 2010.

I welcome Jamaica's commitment to promoting respect for human rights, as demonstrated by its democratic principles and dedicated civil society organizations, among others. I also acknowledge the challenges faced by Jamaica, in particular the high level of crime and violence. The high crime rate and often extreme brutality of the crimes committed has been met by a forceful response by the authorities, leading to an ever increasing spiral of violence. The rising number of killings by both criminal elements and members of the police is evidence of this vicious cycle.

Torture

With the exception of isolated instances, I have not found torture, in the classical sense of deliberately inflicting severe pain or suffering as a means of extracting a confession or information, to be a major problem in Jamaica. This may be partly due to the commendable rule that lawyers or Justices of the Peace must be present during interrogations, which acts as an important safeguard against torture. Severe pain and suffering applied for the purpose of punishment can, however, also amount to torture. I have found a considerable number of cases, which were corroborated by medical evidence, where persons have been subjected to different degrees of beatings in order to punish them. This is true for example, in relation to the events of 8 February 2010 in the Horizon Remand Centre as recounted below.

The term "torture" is not part of the Jamaican lexicon. This may be due to the fact that there is no definition of torture in the criminal legislation. However, this absence of a legally defined crime of torture does not mean that it does not exist in practice. Thus, I strongly urge the Government of Jamaica to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to criminalize torture for preventive purposes.

Inhuman conditions of detention and ill-treatment

I was most concerned about the appalling conditions of detention in general, which reflect a

complete disrespect for the human dignity of persons in conflict with the law. In addition, there was no clear separation of detainees according to the different stages of criminal procedure. Persons detained without charges, remandees and convicted persons are being held together in the same facility, often sharing cells.

There is a general atmosphere of violence and aggression in almost all places of detention, and a frequent use of beatings as a form of punishment. It was also apparent that detainees had no knowledge of or trust in any complaints mechanisms available to them.

a) Police stations

In general, police custody throughout Jamaica can be considered as inhuman. During the visits, I witnessed that detainees were locked up in overcrowded, filthy cells, infested with rats, cockroaches and lice, and with an unbearable stench to them. Many cells were in complete darkness, resembling caves, and with poor ventilation. The time detainees were allowed to be outside their cells, including for using the toilet, was extremely limited. They were otherwise dependent on police officers to allow them out to use the toilet and, when officers refused, they were forced to urinate and defecate in plastic bags and bottles and in plates in front of other detainees. They were often forced to sleep on concrete bunks or on the floor. Although in some cases they were allowed to receive visitors, they were not always able to see them, and when they could, it was always through the grills and only for a few minutes. Access to medical care also depended on the goodwill of the authorities. The overall impression was one of arbitrariness.

If people were held in such inhuman conditions for up to 48 hours, i.e. the maximum duration of police custody in most countries of the world, the problem would not be that severe. But in Jamaica, police lock-ups are at the same time used as remand centres, where persons awaiting trial can be held for several months or even years. I was shocked to discover that a detainee had been held in police custody for five years.

While none of the police stations can be regarded as complying with any standards for the humane treatment of detainees, the conditions found in May Pen Police Station and Denham Town Police Station were certainly the worst. On the other hand, I had a more positive impression of the Police Station in Alligator Pond and more so in Duhaney Park, where female detainees are held. The solution to this problem is not only to renovate or extend existing facilities, as is currently taking place in Hunt's Bay Police Station, but rather to alter the concept of police custody in general. Police custody should only be used for short-term detention not exceeding a maximum of 48 hours. If charged within 48 hours, a person who is not released on bail, should then be transferred to a remand facility under a different authority from the police. I gained the impression that these extremely long periods of police custody under unbearable conditions are calculated to cause such personal distress as to force them to confess.

b) Remand Centres

At the time of the visit, the Horizon Remand Centre held approximately 600 inmates, despite its capacity of 1,056.

I consider the conditions in this detention facility to be extremely harsh, notwithstanding the fact that remand detainees are to be presumed innocent until found guilty. The conditions were better than in the police stations, but still raised serious human rights concerns. One of the main complaints of the detainees was the arbitrariness and lack of water, sometimes for a number of days.

The outbreak of the disturbances of 8 February 2010 is a clear demonstration of the frustration resulting from the conditions of detention and humiliation by warders. The resulting suppression

of this frustration by the authorities, through the use of force, can only be described as excessive. Rather than maintaining order, a number of officials used the incident as an opportunity for administering corporal punishment, leading to severe injuries in a number of cases. The medical evidence gathered, together with the fact that very few officers suffered light injuries while almost 60 detainees were injured, some with broken limbs, leads me to conclude that severe pain was intentionally inflicted for the purpose of punishment, amounting to torture. Many injuries to the detainees were of a classical defensive nature.

c) Correctional Centres

The facilities visited displayed a broad range of quality from the fairly poor to examples of good practice. The two main prisons (St. Catherine Adult Correctional Centre and Tower Street Adult Correctional Centre) are ancient facilities, which were built for storehousing people and are not fit for modern correctional purposes of rehabilitating and re-socializing criminal offenders. They are overcrowded, lack sanitary facilities, and any meaningful opportunities for education, work and recreation. In addition, basic amenities, such as electricity, medical treatment and the use of toilets, depend on the goodwill of warders. I also found credible complaints by prisoners of beatings by the officers. Although efforts were made to hold homosexuals in different sections for their own protection, the consequence of the separation amounted to a loss of privileges of a punitive character.

The conditions at Fort Augusta Adult and Juvenile Correctional Centre were much better, although children were not separated from adults. The Diamond Crest Juvenile Correctional Centre could serve as a best practice model for other correctional centres, not only for girls.

Children

Children may be detained if they are in need of care and protection, if deemed uncontrollable or if in conflict with the law. In the different facilities, I found children of all three categories held together without distinction. It is of great concern that there is in the legislation no clear definition or criteria for the identification of an uncontrollable child. The wide discretion currently allowed to the judiciary has led to a relatively high number of detentions of children under such orders. In addition, many children seem to receive disproportionately long sentences for minor infractions.

The places of detention I visited revealed two different ends of the spectrum of the detention of children. I was impressed by the openness and positive atmosphere I found in Diamond Crest Juvenile Correctional Centre for girls. The genuine interest of the staff and the well-being of the girls were very reassuring. The visit to St. Andrew Juvenile Remand Centre for boys in Stony Hill, on the other hand, demonstrated a disturbing system of repression and regular corporal punishment. The boys on remand were never allowed to leave the buildings, depriving them of any recreational activities in the open air. The overseers appeared to be aware of the use of corporal punishment by certain warders, but did not give the impression of taking serious measures to deal with the situation.

The Fort Augusta Correctional Centre for Women and the Horizon Remand Centre for men are adult institutions, which currently also hold children. In Fort Augusta Correctional Centre, girls were not even segregated from adult women. Even more worrying is the fact that children continue to be held together with adults in police lock-ups. Children have special needs, which cannot be met in institutions equipped and staffed for adults. Consequently, adequate placement in specialized facilities is necessary.

I spoke to several girls who had experienced the fire at Armadale Juvenile Correctional Centre. I look forward to the publication of the results of the investigation and a full disclosure of the circumstances leading up to the event. Notwithstanding the different accounts of the incident,

teargas should not have been used in circumstances in which the girls were held in overcrowded dormitories in lock-down.

Women

In general, places of detention of women can be considered more open and under better conditions than those for men. I was satisfied with the strict separation of female from male detainees. The example of Duhaney Park Police Station for female detainees also shows that police lock-ups can be organised in a much more professional and humane manner.

Albeit to a lesser extent, I also received credible allegations of excessive use of force in Fort Augusta Correctional Centre. Although these incidents were known to the authorities, they did not feel responsible for taking any action or initiating ex-officio investigations, justifying their stance on the grounds that no formal complaint had been lodged.

Persons with mental disabilities

Persons with mental disabilities, suspected or convicted of a crime, are not held in a separate psychiatric institution. Rather, they are detained in special wings of correctional centres. In the case of police stations, they are held together with other detainees. The conditions in which these particularly vulnerable persons are held, together with a lack of adequate medical attention, are damaging to their physical and mental health. Persons suffering from a severe mental illness need placement in a secure psychiatric institution.

Capital punishment and corporal punishment

I am encouraged by the fact that no death sentence has been executed since 1988. On the other hand, the rise in fatal shootings by the police, which are often alleged to amount to extrajudicial killings, as well as the apparent lack of investigation and accountability are of great concern. My interlocutors insinuated that legal executions, which were factually abolished by the judgment of Pratt and Morgan, were replaced by extrajudicial executions carried out by the police taking the law into their own hands.

Ministerial orders banning corporal punishment are positively noted. Nevertheless, the practice of corporal punishment still seems to be deeply entrenched in society, as witnessed in St. Andrews Juvenile Remand Centre, as well as in detention facilities for adults.

Preliminary recommendations

Based on these findings, I wish to make the following preliminary recommendations to the Government of Jamaica:

- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, providing for regular preventive visits to all places of detention by an independent domestic monitoring body.
- Re-accede to the First Optional Protocol to the International Covenant on Civil and Political Rights, providing for the right to lodge individual complaints to the UN Human Rights Committee.
- Criminalize torture under domestic law in full accordance with the definition contained in article 1 of the Convention against Torture, and impose appropriate penalties.
- Reduce police custody to 48 hours and ensure that remandees are held in proper remand centres and not in police lock-ups.

- Introduce accessible complaints mechanisms within places of detention.
- Ensure ex-officio investigations of all allegations of abuse or excessive use of force. Any officer known to be abusive should be removed from custody duties. Heads of police stations and detention facilities shall be made aware of their supervisory responsibility.
- Justices of the Peace and Resident Magistrates should conduct regular visits to all police lock-ups.
- The Independent Commission of Investigation, equipped with sufficient powers and resources to investigate any form of police misconduct, including allegations of extrajudicial killings, torture and ill-treatment, should be rapidly installed and functioning.
- Remove all children from adult detention facilities.
- Abolish capital punishment.
- Break the cycle of violence by addressing the root causes of violent crime, including trade in firearms, links of criminal gangs to political parties, corruption, poverty, etc.

I also wish to recommend to the international donor community to consider the administration of justice, and in particular the fight against violent crime, policing and the penitentiary system as the highest priority.

After completing my mission on 21 February 2010, I will submit a comprehensive written report detailing my findings and recommendations on the visit to the Government of Jamaica and the United Nations Human Rights Council."

Information Note

Manfred Nowak, appointed Special Rapporteur on 1 December 2004 by the UN Commission on Human Rights, is independent from any government and serves in his individual capacity. He has previously served as member of the Working Group on Enforced and Involuntary Disappearances, the UN expert on missing persons in the former Yugoslavia, the UN expert on legal questions on enforced disappearances, and as a judge at the Human Rights Chamber for Bosnia and Herzegovina. Nowak is Professor of Constitutional Law and Human Rights at the University of Vienna, and Director of the Ludwig Boltzmann Institute of Human Rights.

Learn more about the mandate and work of the Special Rapporteur:

<http://www2.ohchr.org/english/issues/torture/rapporteur/index.htm>

OHCHR Country Page – Jamaica:

<http://www.ohchr.org/EN/Countries/LACRegion/Pages/JMIndex.aspx>

For more information and media requests, please contact Ms. Claudia de la Fuente (Tel: +1 876 376 3025) or write to sr-torture@ohchr.org.

Appendix: Meetings and Locations Visited

(a) Meetings

The Special Rapporteur held meetings with:

H. E. Dr. Kenneth Baugh, Deputy Prime Minister and Minister for Foreign Affairs and Foreign Trade
H. E. Mr. Dwight Nelson, Minister of National Security

H. E. Ms. Dorothee Lightbourne, Attorney General and Minister of Justice
H. E. Sen. Marlene Malahoo Forte, Minister of State, Ministry of Foreign Affairs and Foreign Trade
Amb. Evadne Coye, Permanent Secretary of the Ministry of Foreign Affairs and Foreign Trade
Major Richard B. Reese, Permanent Secretary of the Ministry of National Security
Amb. Vilma McNish, Under Secretary for Multilateral Affairs, Ministry of Foreign Affairs and Foreign Trade
Ms. June Spence-Jarrett, Commissioner of Corrections
Mr. Owen Ellington, Acting Commissioner of Police
Mr. Douglas Leys, Solicitor General
Mr. Earl Witter, Public Defender
Ms. Mary Clarke, Children's Advocate
Ms. Faith Webster, Executive Director of the Bureau of Women's Affairs
Justice Lensley Wolfe, Chair of the Police Public Complaints Authority and former Chief Justice

The Special Rapporteur also met with civil society representatives. In addition, he held meetings with Mr. Minh Pham, Resident Representative of the United Nations Development Programme, the United Nations country team and the diplomatic community.

(b) Locations visited

St. Catherine Adult Correctional Centre
Tower Street Adult Correctional Centre
Fort Augusta Adult and Juvenile Correctional Centre
Horizon Adult and Juvenile Correctional Centre and Remand Centre (twice, denied entry on first visit)
Diamond Crest Juvenile Correctional Centre for girls
St. Andrew Juvenile Remand Centre for boys
Maxfield Park Children's Home
Alligator Pond Police Station
Constant Spring Police Station
Crossroads Police Station
Denham Town Police Station
Duhaney Park Police Station
Halfway Tree Police Station
Hunt's Bay Police Station
Kingston Central Police Station
May Pen Police Station
Portmore Police Station (100 Man)