

**PROPOSALS OF CABINET SUB-COMMITTEE CONVENED TO REVIEW THE
DETENTION SYSTEM (POLICE LOCKS-UPS AND CORRECTIONAL FACILITIES)**

1.0 PURPOSE

1.1 The purpose of this Ministry Paper is to:

- (a) introduce to the Houses of Parliament the Administration Policy for Persons Deprived of their Liberty, a copy of which is appended hereto; and
- (b) bring to the attention of Parliament the recommendations of the Cabinet Sub-Committee that was convened in August 2014 to conduct a *Review of the Detention System, and to develop a Strategic Response to the Issues of the Treatment of Persons in Lockups and Correctional Facilities*; and

2.0 BACKGROUND

2.1 By way of Decision No. 17/15 dated 20 April 2015; Cabinet gave approval for, inter alia, the following:

- (i) the implementation of the new Administration Policy for Persons Deprived of their Liberty and its tabling in Parliament as a Ministry Paper;
- (ii) The framework presented by the Cabinet Subcommittee in relation to measures for the reduction of overcrowding in detention facilities through process improvements and law reform, and those related to the review of the infrastructure and logistics of the detention facilities, and directed that the recommendations presented be also outlined in the Ministry Paper.

2.2.1 It is in this regard that this Ministry Paper is being brought to the attention of the House.

2.3 As you are aware, on August 6, 2014 Mario Deane succumbed to injuries he received on or about August 3, 2014 while he was being held in custody at the Barnett Street police lock-up, having been arrested for possession of a ganja spliff. This tragic incident received substantial local and international attention, and again brought into focus the conditions relating to arrest and detention, and the state of detention facilities, in Jamaica.

2.4 On Monday, August 18, 2014, Cabinet established a Sub-Committee, headed jointly by the Minister of National Security and the Minister of Justice, to review the detention system and develop a strategic response to the situation. In order to ensure the consultation process was inclusive and transparent, the co-Chairmen of the Sub-Committee determined that it should include technical support from the following public and private sector entities:¹

¹ Written comments were also received from members of the public

Public sector entities

- The Ministry of National Security
- The Ministry of Justice
- The Jamaica Constabulary Force
- The Police Civilian Oversight Authority
- The Ministry of Health
- Attorney General's Department
- The Legal Reform Department
- INDECOM
- The Office of the Director of Public Prosecutions
- The Resident Magistrates Association
- The Legal Aid Council
- The Office of the Public Defender
- The Office of the Children's Advocate
- The Department of Correctional Services
- Custodes Rotulorum

Private sector entities

- Stand Up Jamaica
- Human Rights Activist
- The Jamaican Bar Association
- Jamaicans For Justice

2.4 The first meeting of the Sub-Committee was held on August 28, 2014, and the decision was taken to divide the work among three Working Groups, respectively tasked to:

- a) Examine ways to reduce overcrowding in police lock-ups and correctional facilities through process improvements and law reform (Working Group 1).
- b) Review the current *Lock-up Administration Policy and Procedures* of the Jamaica Constabulary Force, to address issues relating to training, professionalism and accountability of officers who interface with persons in custody, and to address issues relating to persons in custody who have special requirements (Working Group 2).
- c) Review the infrastructure and logistical issues affecting police lock-ups and correctional facilities (Working Group 3).

2.5 The Working Groups were mandated to meet and deliberate on their specific terms of reference, and then to prepare reports to the Sub-Committee, which met in plenary on October 2, 2014 and December 3, 2014 to receive the interim and final reports of the three Working Groups.

2.6 The three Working Groups of the Sub-Committee examined the issues assigned to them, and have made a number of recommendations.

3.0 SUMMARY OF WORKING GROUP RECOMMENDATIONS

Measures for the reduction of overcrowding in detention facilities (police lock-ups and correctional facilities), through process improvements and law reform

3.1 The following are the recommendations proposed by Working Group 1:

a) Extending Category of Offences where offer of Bail is Mandatory

The category of offences where the offer of bail is mandatory should be extended to include:

- i) Offences which are punishable by a fine only, or which carry a maximum term of imprisonment not exceeding twelve (12) months.
- ii) The offences in this category should include (but not be limited to) assault at common law, possession of eight (8) ounces or less of ganja, malicious destruction of property, where the value of the property does not exceed \$20,000.00, and simple larceny, where the value of the stolen property does not exceed \$5,000.00.

b) Own-Surety Bail

A person should be entitled to bail on his/her own surety in the following circumstances, where the person is charged with an offence(s) which a Resident Magistrate has jurisdiction to try:

- i) Where the person has been charged with an offence which carries a maximum term of imprisonment not exceeding two (2) years, has been offered bail and fails to take up the offer of bail within six (6) months of being held in custody.
- ii) Where the person has been charged with an offence which carries a maximum term of imprisonment exceeding two (2) years, has been offered bail and fails to take up the offer of bail within nine (9) months of being held in custody.

In these circumstances, the person shall be brought before a Resident Magistrate as soon as is practicable, and shall be granted bail on his/her own surety (along with such other orders as the Resident Magistrate considers appropriate, in accordance with Section 4(4) of the Bail Act).

As stated above, these entitlements would be applicable only where the person is charged with an offence(s) which a Resident Magistrate has jurisdiction to try.

c) Fixed Penalty Notices

The use of Fixed Penalty Notices should be expanded. These notices (commonly referred to as “tickets”) offer the offender the opportunity, by paying a specific penalty, “to discharge any liability to be convicted of the offence to which the notice relates”.² The system of Fixed Penalty Notices should be expanded to include a wide array of minor offences, such as exposing goods for sale, possession of under eight

² Blackstone's Criminal Practice 2014, Paragraph D2.41

(8) ounces of ganja, smoking tobacco in a public place, possession of an offensive weapon, malicious destruction of property, not exceeding \$20,000.00 in value, simple larceny, where the value of stolen property does not exceed \$5,000.00, and appropriate offences under the Towns and Communities Act.

d) Caution System

A system of cautions should be introduced by legislation, along the lines of the United Kingdom's caution system. The simple caution (once known as a formal or police caution) provides for the quick out-of-court disposal of cases.³ The scheme is designed to provide alternative means for dealing with low-level, mainly first-time offenders, when specified public interest and eligibility criteria are met.⁴ A similar system could be implemented in Jamaica in respect of offences triable by a Resident Magistrate or Petty Sessions Court, in the case of first-time offenders where exceptional circumstances exist such that a caution is justified, as follows:

- i) In the case of summary offences, simple cautions should only be given if a senior police officer (of at least the rank of Superintendent) so authorizes.
- ii) In the case of indictable offences (or hybrid offences triable summarily or on indictment), simple cautions should only be given if a senior police officer (of at least the rank of Superintendent) so authorizes and the Director of Public Prosecutions or Clerk of the Court agrees.
- iii) In either case, the decision-maker(s) must be satisfied that –
 - there are exceptional circumstances such that the public interest does not require the prosecution of the offender, and that a caution is justified, and
 - it is likely that, if the offender was prosecuted, the court would not impose a term of imprisonment.
- iv) In assessing whether exceptional circumstances exist in a particular case, the following non-exhaustive list of factors should be taken into account:
 - The extent of culpability and/or harm caused
 - The degree of intention or the foreseeability of any resultant harm
 - Any significant aggravating factors
 - Any significant mitigating factors
 - The lack of any recent similar previous convictions or cautions
 - Any other factors relating to the offender or commission of the offence likely to have a significant impact on sentence

³ <http://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf> Paragraph 6

⁴ <http://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf> Paragraph 6

- The overall justice of the case and whether the circumstances require it to be dealt with in open court
 - The range of sentences appropriate to the circumstances of the case.
- e) Greater use of non-custodial sentencing options
Judges and Resident Magistrates should be regularly exposed, through periodic seminars, to the range of options available in sentencing under the Criminal Justice (Reform) Act, in order to promote their use.
- f) Standardized requirements for taking up bail
The requirements to take up an offer for bail should be documented and standardized across all courts in Jamaica, including the development and use of standard documents required for prospective sureties, to guide our Court offices.
- g) Amendments to the Bail Act
- i) Section 22 of the Bail Act and Section 63A of the Judicature (Resident Magistrates) Act should be amended to restrict detention, for the purposes of identification parade, to a maximum of 120 hours. A Resident Magistrate would not be able to permit detention without charge beyond this period. In the interim, this could be achieved by a practice direction issued by the Chief Justice.
 - ii) Section 22 should be amended to restrict the authority of the Justice of the Peace or Resident Magistrate to extend detention without charge beyond 48 hours, other than where detention is being extended to up to 120 hours to facilitate an identification parade.
 - iii) The Bail Act should be amended to introduce bail pending charge (i.e. pre-charge bail for persons detained without charge). This would empower the police, a Justice of the Peace or Resident Magistrate to grant bail to someone who has been detained but not yet charged.
 - iv) A provision should be added to the Bail Act which gives a clear time limit within which someone charged must be brought before the Court.
 - v) Section 6(2) of the Bail Act should be amended to provide specifically that electronic monitoring is one of the conditions which may be specified by a Judge or Resident Magistrate as a condition of bail. The related technical infrastructure will need to be procured to support release from custody on condition of electronic monitoring.
- h) Pre-Charge Detention & Monitoring

The practice should be implemented whereby the officer in charge and sub-officer in charge of the station are required to check on all persons who are in custody, and to cause the release of any detainee who has not been charged and who:

- is in custody longer than 24 hours without an order of a Resident Magistrate or Justice of the Peace;
- is in custody longer than the period ordered by the Resident Magistrate or Justice of the Peace;
- is in custody longer than 48 hours or 120 hours, as the case may be (once these restrictions are introduced as per paragraph (g) i and ii above); or
- otherwise ought not to be in custody.

This practice should be implemented by Force Orders in the short term, and then by Regulations under the Bail Act.

i) Constabulary Force Act

Section 25 of the Constabulary Force Act should be amended to remove the requirement that a detainee should require an officer to bring him before a Justice of the Peace (i.e. to place the onus on the police, rather than the detainee, to bring him/her before a Justice of the Peace).

j) Apprehension Reports for Detained Persons

The Officer in Charge of the Station, Sub-Officer in Charge of the lock-up or the Senior Sub-Officer on duty, on deciding that a person should be held in custody, should be required forthwith to give such person a document (“apprehension report”) explaining, inter alia, the reasons given for his/her detention.

k) Enquiries by Resident Magistrates

Resident Magistrates are to be reminded that the weekly enquiry into the conditions of person detained, as prescribed by section 286 of the Judicature (Resident Magistrates) Act, is an important part of their functions. It would be useful if this role could be facilitated by the use of closed circuit television and audio-visual links.

The Resident Magistrates ought to issue reports on their visits, setting out whether anyone was being held in a lock-up unlawfully, as well as outlining the conditions of the facility (in addition to any entries made in records held at a lock-up). A standardized form for the visiting report could be developed. The visiting reports should be sent to the Senior Resident Magistrate, who can then forward same to the Commissioner of Police, within 48 hours, if it is found that police officers are in breach of the law.

These arrangements could be supervised by the Chief Justice.

l) Role of Justices of the Peace

A system should be established in each parish whereby Justices of the Peace visit the lock-up at least once per day. This would help to address the failure to bring detainees before a Resident Magistrate or Justice of the Peace within 24 hours after their arrest where they are not charged. In the short term, this arrangement could be implemented by way of the Custodes creating a roster.

Justices of the Peace ought to issue reports on their visit, setting out whether anyone was being held in a lock-up unlawfully, as well as outline the conditions of the facility (in addition to any entries made in records held at a lock-up). A standardized form for the visiting report could be developed. The visiting reports should be sent to the Custos, who can then forward same to the Commissioner of Police, within 48 hours, if it is found that police officers are in breach of the law.

These arrangements could be supervised by the Custodes (indeed, some are already doing this).

m) The Decision to Charge

Prosecutors at all levels of the Court System (i.e. including the Clerks of Court) should abide by the Director of Public Prosecution's Protocol on the Decision to Prosecute. Training on this Protocol should be arranged from time to time.

n) Time limits for commencement of trials

A fixed period should be introduced within which the prosecution should be ready for trial or preliminary enquiry/committal proceeding (as the case may be), in default of which the defendant should be entitled to be released and the case dismissed for want of prosecution.

Similarly, a fixed period should be established for the defence to be ready thereafter, in default of which the trial or preliminary enquiry/committal proceeding would proceed.

Power should be reserved to the Judge or Resident Magistrate to extend the fixed period in cases where the reason for delay is outside the control of the party who is obliged to be ready within the fixed period (treating delay caused by any state agency as being within the prosecution's control for this purpose) and Judge or Resident Magistrate considers it in the interests of justice to grant the extension (taking into account the constitutional imperative of having cases brought to trial within a reasonable time).

o) Updating of the Prisons (Lock-Ups) Regulations 1980

The Prisons (Lock-Ups) Regulations 1980 should be amended so as to harmonize them with the new Lock-up Administration Policy and Procedures proposed by Working Group 2, and the revised regulations be re-promulgated under the Corrections Act.

Review of the Lock-Up Administration Policy and Procedures

3.2 Working Group No 2 reviewed the JCF's current *Lock-up Administration Policy and Procedures* taking into consideration issues relating to training, professionalism and accountability of officers who interface with persons in custody, as well as the need for policy and procedures for persons in custody who have special requirements. The following is a summary of the recommendations which were made by the said Working Group:

- a) A Suicide Prevention Protocol should be established that will outline the procedures to be followed when dealing with persons who manifest suicidal tendencies.
- b) The policy should include provisions, under the broad heading of General Health Care, which target Mental Health and Physical Injury/ Concerns.
- c) Specific provisions should be included to outline how Persons with Disabilities are to be dealt with.
- d) Specific provisions should also be included to outline procedures for dealing with Children in Conflict with the Law.
- e) The policy should have a training component which emphasizes the need for ongoing capacity building with regard to the treatment of the different categories of persons who may be deprived of their liberty.
- f) The policy should include sanctions for breaches of the policy.
- g) The policy should specifically treat with persons who are remanded and who, under normal circumstances would be held in the police lock-ups, but are instead handed over to the Department of Correctional Services.

In light of the aforementioned proposals, Working Group 2 produced a revised version of the policy, entitled *Administration Policy for Persons Deprived of their Liberty* which includes the aforementioned proposals, a copy of which is being presented to the House today, and is attached to this document as **Appendix 1**.

Review of the infrastructure and logistics of the detention facilities

3.3 Working Group No 3 carried out a review of the infrastructure and logistical issues affecting police lock-ups and correctional facilities. The following is a summary of their proposed recommendations:

- a) The Government of Jamaica should seek to remove all remandees from the Jamaica Constabulary Force lock-ups, and house them at a bona-fide Remand Centres, as is allowable under section 16 of the Corrections Act.
- b) The Government of Jamaica must take the necessary immediate steps for the Department of Correctional Services to operate the Horizon Remand Centre at its full design capacity.
- c) All remandees held at the Jamaica Constabulary Force Area 4 and Area 5 lock-ups should be moved to and held at the Horizon Remand Centre.
- d) The South Camp facility should cease operating as a remand lock-up, and its remandees should be transferred and consolidated at the Horizon Remand Centre.
- e) The Fort Augusta Adult Correctional Centre should be retired, and its inmate population (and useable chattels, material and equipment) should be transferred to the South Camp Corrections Centre.
- f) The Government of Jamaica should construct, equip and staff a 50 prisoner Remand Block at the Richmond Farm Adult Correctional Centre to support the remand needs of JCF Area 2.
- g) The Government of Jamaica should construct, equip and staff a Regional Remand Centre in Western or Central Jamaica to support the remand needs of JCF Areas 1 and 3.
- h) The Government of Jamaica by policy directive should transfer the responsibility for the administration and management of remandees island-wide to the Department of the Correctional Services.
- i) The requisite number of Correctional Officers should be recruited, trained and equipped to staff the two additional remand facilities proposed.
- j) The Government of Jamaica, through the Ministries of Health, Justice and National Security, should make the necessary arrangements for inmates deemed 'unfit to plead' to be managed and treated outside of a prison setting.
- k) The Government of Jamaica should seek private sector partners to build, own, and operate (or a variant thereof) a maximum security prison for an estimated population of 3,500, and should aim to retire the Tower Street Adult Correctional Centre and the St. Catherine Adult Correctional Centre in 5 -7 years and transfer their inmate populations to the new modern correctional facility.

- l) The Ministry of National Security and its Agencies should promulgate a set of minimum standards for treatment of detainees to be reviewed annually, and provide the necessary resources to maintain these standards.
- m) The Government of Jamaica should adopt an approach to implementation which is project-oriented, long term in scope, multi-agency and inclusive of the views of human rights and civil society organizations.



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Minister of National Security

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