

Report on Prison Conditions in Jamaica



to be drawn



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8/9 Frith Street
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W1D 3JB

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Preface

Although I had been brought face to face with the horrible conditions in our penal institutions by reason of having chaired the Commission of Enquiry into the St. Catherine District Prison in 1974 this detailed report on the existing conditions in our two major correctional institutions has evoked distress, disappointment and shame.

Tim Owen QC and Alison McDonald have produced an excellent survey which is obviously authenticated by James Robottom's detailed observation and careful analysis, although they were understandably unable to conceal the shock they experienced. This Report should be read and re-read by Jamaicans in general but more particularly by the Prime Minister, Ministers responsible for the correctional services and youth, by judges and magistrates, by the leaders of the Church and Bar.

Jamaica has been in the forefront of the fight for freedom and the recognition of the inherent dignity of each human being. We have acceded to major international human rights conventions. We have sought to portray an image of warm brotherhood and sisterhood. Yet in a new century and at our very doorstep, there is callous inhumaneness and indifference.

Although our experience is that disclosures of this type have not succeeded in inducing meaningful reforms, one still ventures to hope that the authorities will be shamed into reaction and action.

Dr Lloyd G. Barnett OJ

Chairman, Independent Jamaican Council for Human Rights

Foreword

Jamaican Penal Institutions house anyone unfortunate enough to be caught up in the criminal justice system – the guilty, the innocent and those suffering from mental illness. On any view, the conditions described in James Robottom’s carefully written report are sub-standard and breach both Jamaican and international legal requirements and the challenge for the executive, legislature and judiciary is to face up to this reality. In their introduction, Tim Owen QC and Alison Macdonald conclude that “*a system of independent monitoring of prisons is now an urgent priority*”, and few readers of this publication will be able to dissent from this recommendation.

The Constitution of Jamaica is an affirmation by the people of Jamaica that their nation should be founded upon principles which acknowledge faith in human rights and fundamental freedoms, the dignity of human beings and the equal and inalienable rights with which all human beings are endowed. The Constitution expressly prohibits inhuman and degrading treatment and punishment and James Robottom’s account of his findings inevitably leads to the conclusion that prison conditions in Jamaica are unconstitutional and fall way short of recognised and accepted minimum standards for the treatment of prisoners. We sincerely hope that this report will add a little more weight to the constitutional recognition that the rights it proclaims are afforded to *every* person in Jamaica including those lawfully detained in Jamaica’s penal institutions. The time has surely come for some positive action.

We would like to thank James Robottom for his dedication and perseverance in producing such an insightful account of prison conditions in Jamaica. Based on his stark findings, concrete measures should now be taken to ensure that Jamaica’s penal system complies with domestic and international standards governing the treatment of prisoners. We would also like to thank Tim Owen QC and Alison Macdonald, prison law experts, for their excellent introduction and we hope that their constructive recommendations for change will act as an indispensable guide to legislators and penal reformers who urgently need to consider the state of Jamaican prison conditions in light of contemporary human rights standards. We would also like to express our thanks to Dr Lloyd Barnett and Nancy Anderson of the Independent Jamaica Council for Human Rights for their support and excellent advice on this project.

Finally, we would like to thank Baroness Vivien Stern for her clear, concise and powerful contribution, which encapsulates the spirit of this report.

Saul Lehrfreund MBE and Parvais Jabbar
Executive Directors
The Death Penalty Project
July 2011

OVERVIEW

by Tim Owen QC and
Alison Macdonald
Matrix Chambers

In criminal justice matters, Jamaica has been rightly praised for its de-facto abolitionist stance on the death penalty: nobody has been executed on the island since 1988. However, the alternative to death is imprisonment. For many years, NGOs, the UN Human Rights Committee, the Inter-American Commission on Human Rights, and various independent and internal reports have expressed serious concern about the conditions in which Jamaica detains its prisoners.

Through general human rights treaties such as the International Covenant on Civil and Political Rights, and regional treaties such as the Inter-American Convention on Human Rights, the international community has laid down basic standards of treatment which must be accorded to all. Over the years these have been supplemented by instruments directly concerned with prisons, including the Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), The Basic Principles for the Treatment of Prisoners (1990) and The Standard Minimum Rules for the Administration of Juvenile Justice (1985). There are also a number of instruments which relate specifically to medical and discipline staff working in prisons.

These instruments have been developed by the international community as a whole. They represent the basic human values which must be maintained in any decent system of imprisonment, and set out the very minimum standards which any prison regime must meet. Most fundamentally, Article 10 of the International Covenant on Civil and Political Rights states that *'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'* Of course, a State should treat all persons, in prison and outside, with humanity and respect. However, a special obligation arises when the State chooses to deprive individuals of their liberty. Such people become dependent on the State for every aspect of their lives. They are deprived of the opportunity to provide the necessities of life for themselves: their access to food, to bedding, clothing, medical care, exercise, even fresh air and light is entirely dependent on the prison regime in which they find themselves. Whether or not they will live in a way which respects 'the inherent dignity of the human person' is almost entirely dependent on whether the State which imprisons them is committed to protecting this dignity.

Jamaica is a signatory to the major human rights conventions, and has committed to be bound by the standards and values which they embody. However, over the years the Inter-American Commission and the UN Human Rights Committee have found Jamaica to have violated basic prisoners' rights on numerous occasions. A series of cases before these bodies contain consistent and repeated findings of squalid physical conditions, sterile regimes, violence, poor or nonexistent medical care, and a lack of any decent or purposeful way for Jamaican prisoners to spend their days. These cases give a disturbing glimpse into prison life in Jamaica. However, an international body's review of

an individual prisoner's case cannot provide a systematic overview of a country's prison system, or a path towards improvement.

As we discuss below, a system of detailed and regular prison inspections has a vital part to play in ensuring that international standards are met. In the United Kingdom, for example, Her Majesty's Chief Inspector of Prisons has published many highly critical reports, coupled with detailed programmes of reform, which have led to significant improvements in the lives of prisoners detained in previously failing prisons. No State's prisons are immune to criticism: the European Court of Human Rights has found most of the parties to the Convention to have breached prisoners' rights in various respects, including through poor physical conditions, lack of access to the outside world, and inadequate care for mental and physical health problems.

The creation of a prisons inspectorate requires a willingness on the part of the State to allow prisons to be open to scrutiny. The present Report begins with an account of the author's attempts – rightly described as Kafkaesque – to gain access to Jamaica's places of detention. A research trip which had the potential to allow a systematic assessment of prison conditions was curtailed by a clear unwillingness on the part of the authorities to allow such access. However, the author persevered, and succeeded in gaining access to conditions about which very little was known. He visited prison blocks and cells which quite literally do not see the light of day. He has recorded in detail what he saw. While he acknowledges the limitations of his research, what he was able to see indicates that conditions in Jamaica's prisons continue to fall far short of basic standards.

This is most obviously so in respect of the physical conditions of detention. It is well documented, throughout the world, that prison overcrowding seriously threatens the ability to maintain a decent regime. Some of the problems revealed in the report stem directly from overcrowding: three, four or five people spending most of the day in cells designed for one, with less than a quarter of the living space which current standards indicate as the bare minimum. To this extent, the problems described depend on political and judicial solutions, either through reduced use of imprisonment or the provision of new prisons. The experience of many States is that the latter course, while offering a short term solution, simply leads to the new prisons quickly becoming as full as the old ones. It is clear that, whatever the answer to the overcrowding issue, prison conditions cannot improve until it is addressed. As the Board of Enquiry which reported on serious disturbances at Tower Street and St Catherine prisons in August 1997 noted:

“Practically every published report on our two major prisons begins and ends with the same litany: namely, that the root of the problem is overcrowding. Notwithstanding this, no attempts, or at any rate, no serious attempts have ever been made to tackle this nagging cancer which refuses to go away, and now threatens to destroy the entire structure. It is time for us to grasp the nettle. If we

do not approach the problem of overcrowding as an immediate priority, then the situation in our prisons, awful as it is, can only get worse.”

The same comments apply in 2011.

As well as highlighting the devastating effects of overcrowding, the author also reports on conditions which would be unacceptable no matter how few prisoners had to endure them. He describes a scene in the North Block of Tower Street Adult Correctional Centre:

“Once informed by the warders that I was examining the conditions in the prisons, the inmates crowded round to tell me about the aspects of their existence that most aggrieved them: the open gutter running along the front of the cells, filled with stagnant water and rotting food, the places on the corridor ceiling where plaster was coming away and risked falling on the inmates, the insects that infested their cells. On one section the inmates led me to the washing area at the end of their block. It was disgusting. There was one shower pipe – to be shared between over 120 inmates – and three toilets, in an open, unroofed area, with low stone walls dividing the cubicles and shower. The stone was broken and crumbling, and covered in mould and fungus. The stench of toilets was overpowering. The inmates had improvised a screen by placing a sheet over the walls to retain their modesty. I had felt uncomfortable about inspecting the washroom while inmates had their only opportunity to use it for the day, but I was almost physically led down to it by the prisoners, who were so keen to show the terrible state it was in. As they queued to use the shower and toilets, it looked as though they were standing in a 19th century ruin.”

The author also documents inmates sleeping on the floors of cockroach-infested cells, and spending almost all of their day in cells without natural light, with brief trips to a tiny exercise yard. There appeared to be little evidence of any purposeful regimes or opportunities for rehabilitation, despite Jamaica’s professed commitment to rehabilitation in its domestic laws. The few remaining death row prisoners were housed separately from other prisoners, in contravention of international guidance, and the detention centre housing prisoners with psychiatric problems contained the most distressing conditions of all those witnessed by the author.

Rules 9-21 of the Standard Minimum Rules for the Treatment of Prisoners set out detailed provisions for physical accommodation, none of which appear to be met by the current Jamaican prison regime. For example, Rule 10 requires that *‘All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic contents of air, minimum floor space, lighting, heating and ventilation.’* Even the author’s

short visit is sufficient to conclude that Jamaica's prison conditions fall radically short of any acceptable minimum standard.

These findings are all the more striking when set against previous reports. Similarly degrading conditions were documented by Vivien Stern in her 1989 visit under the auspices of the Jamaica Council on Human Rights. Even longer ago, a 1954 Commission of Inquiry reporting to the British colonial administration set out the most detailed record to date of conditions in the island's prisons. Disturbingly, many of their detailed recommendations remain unfulfilled. In Tower Street they noted, for example, that 'The cells are not lighted and are so dark when the wooden doors are closed at 3.30 p.m. that it is impossible for prisoners to read, even if they wanted.' Their recommendation that cells be fitted with electric lights has never been implemented, leaving prisoners either in the dark for 15 hours a day, or forced to set up their own ramshackle and dangerous wiring arrangements. Broken toilets, inadequate showers, poor food and bedding, and lack of medical care all feature in the 1954 report, as in 2011.

While poor physical conditions are readily apparent to any visitor, there are elements of prison life which it is harder to assess on an informal short visit. For example, official prison inspectorates place great emphasis on the opportunity to speak to prisoners confidentially and in private. This is essential in order to find out about certain aspects of prison life, such as whether doctors really visit as often as claimed, or whether staff are violent towards inmates, which are less obvious than crumbling toilets and windowless cells.

Just over 20 years ago, in May 1991, an important conference took place in Port of Spain, Trinidad, attended by over 70 participants from the English, Dutch, French and Spanish Caribbean, Europe, and North and South America. It was opened by the Hon A.N. Robinson, Prime Minister of Trinidad and Tobago, who said that his country was 'committed to improving prison conditions in conformity with internationally accepted standards'. The keynote address was given by the Hon Carl Rattray QC, Minister of Justice and Attorney General of Jamaica. Mr Rattray highlighted the pressure placed on legal systems by high crime rates and public anxiety about crime, but stressed that this could never be an excuse for eroding civil rights. Judge Clinton Foy from Aruba made the case for humane treatment of prisoners and highlighted the contradiction of imprisonment which tries to reform criminals by dehumanizing them and humiliating them. The late Michael Hercules, Commissioner of Prisons from Trinidad and Tobago, highlighted the importance of well-trained, highly motivated staff as the basis of a humane prison system. The Conference ended with the making of a wide range of specific recommendations, including the following under the heading of Prisoners' Rights:

- “1. In all countries, some independent monitoring mechanism is required to ensure that prison rules and prisoners' rights are not discarded or submerged in security considerations.

2. Prisons should be inspected regularly by an official, independent of the prison administration, who would be concerned with proper administration and staff management, proper treatment of prisoners and due application of all current prisons legislation.
3. In some territories, independent ombudsmen and visiting committees are in place, which visit prisons to hear prisoners' complaints and look into grievances. Similar mechanisms are needed in all Caribbean territories. The idea of an independent committee chaired by a Judge is a model which should be explored."

These recommendations echo a more recent statement of principle issued by the African Commission on Human and People's Rights in 2002. Known as the Robben Island Guidelines and intended to establish measures to prohibit and prevent inhuman or degrading treatment or punishment in all African States, the guidelines call upon States to:

"establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians with the mandate to conduct visits to all places of detention and to generally address the issue of prevention of torture, cruel, inhuman or degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights."

Yet 20 years on from the Port of Spain Conference, Jamaica still has no effective, permanent independent monitoring mechanism in place with an exclusive remit to inspect prisons and other places of detention with a view to ensuring that minimum standards of treatment are maintained and inhuman or degrading treatment or punishment eliminated. The Corrections Act enables the responsible Minister to provide for the inspection of correctional institutions and allows him to designate people as inspectors. But this falls some way short of what the Port of Spain conference was calling for in 1991 and in no way guarantees that Jamaican prisons are at all times subject to a form of inspection which is carried out by a body independent both of individual prisons and of the prison system itself.

Plainly there are many different ways in which accountability for what goes on in prisons can be achieved. Independent lay monitoring, involving members of the local community with a right of access to the prison in reporting back to the prison authorities and the local community what they observe, can be an effective means of preventing human rights abuses. Lay monitors can also forge close links between an individual prison and the local community. A system of more formal inspection carried out on individual prisons by staff from the Ministry of Justice can also be an effective means of auditing all aspects of prison life. But neither of these two safeguards can provide

the crucial guarantee of both professional competence and experience combined with institutional independence. How such independence is secured may vary from country to country, but by far the most independent structure is one in which the office of Chief Inspector is directly appointed by the legislature with a duty to report to the legislature, and in which the Inspectorate has a remit which embraces both a regular programme of announced and unannounced inspections and a power to conduct thematic reviews of various aspects of prison policy, such as the use of segregation and the treatment of children and women in prison.

International instruments are quite clear in requiring that all prisons must be subject to a system of inspection which is independent of the authority responsible for administering those prisons. And James Robottom's disturbing report on prison conditions in Jamaica makes it clear that a system of independent monitoring of prisons is now an urgent priority. Effective inspections procedures exist to protect the rights of prisoners and their families, to ensure that proper procedures exist, and to see that they are maintained by the prison administration at all times. But they also create an important protection and safeguard for prison staff, who are inevitably vulnerable to the charge of neglecting or deliberately abusing those they are required to detain. They also provide a great incentive to staff to excel in their jobs by acknowledging and giving due credit to individuals whose work and commitment deserve praise. It is surely high time that the recommendations of the 1991 Port of Spain Conference are finally reflected in the provisions of Jamaican law. Only such a step can secure that Jamaica's penal system is compatible with international standards governing the treatment of prisoners.

OBSERVATION REPORT

By James Robottom

PART ONE:

Introduction and Statutory
Framework

1. Introduction

The Jamaican Penal System

Since gaining independence in 1962 Jamaica has suffered from a history of political volatility and soaring crime rates. The island's murder rate is the third highest in the world,¹ and gang and drug related crime remain rife. In this context, it is unsurprising that crime and justice policy and the politics of punishment play a particularly significant role in Jamaican society. In particular, the death penalty for murder, as elsewhere in the Commonwealth Caribbean, retains a high degree of public support, which has frequently been exploited by politicians to political ends.²

However, whilst a majority vote in the Jamaican Parliament in November 2008 rejected the abolition of the death penalty, and capital punishment for certain forms of murder remains on the statute book,³ it seems likely that Jamaica will continue to be defined by the United Nations as *de facto* abolitionist for the foreseeable future. The last execution on the island took place in 1988, and following a series of Privy Council decisions restricting the use of capital punishment – culminating with the mandatory death penalty being declared unconstitutional in *Lambert Watson v The Queen* in 2004⁴ – the number of men incarcerated on death row at St Catherine Adult Correctional Centre (SCACC) has been reduced to an historic minimum.

The imposition of the death penalty in Jamaica has attracted much attention from human rights lawyers and NGOs over the years. A sometimes overlooked collateral consequence of this attention has been to expose the conditions of detention of condemned prisoners, and to attempt to secure a minimum standard of treatment for them through their legal representatives. In a series of cases in the 1990s, for instance, the United Nations Human Rights Committee found that various aspects of the treatment of condemned prisoners at the pre-trial and post-sentence stage on the island breached both the prohibition on '*torture, inhuman and degrading treatment or punishment*' and the requirement that '*All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the person*' under the International Covenant on Civil and Political Rights ('ICCPR').⁵

¹ After only Columbia and South Africa, see: www.nationmaster.com quoted in Hood, Roger, *The Death Penalty: A Worldwide Perspective*, 4th Edition, OUP, 2008, p.106.

² See for instance, 'Tired Death Penalty Debate', Jamaica Gleaner, 12th June 2007, <http://www.jamaica-gleaner.com/gleaner/20070612/cleisure/cleisure3.html>.

³ 'Death Penalty Retained: What's Next?' Jamaica Gleaner, 18th December 2008, <http://www.jamaica-gleaner.com/gleaner/20081214/cleisure/cleisure2.html>.

⁴ [2005] 1 AC 472.

⁵ These decisions came before Jamaica became the first country ever to denounce the Optional Protocol to the International Covenant on Civil and Political Rights and thus withdraw the right of individual petition to the Human Rights Committee in 1997. Lists of such cases are provided in the appendices to this report. See amongst others, for violation of Article 7 of the International Covenant on Civil and Political Rights, *Edwards v Jamaica* (1997) UN Doc CCPR/C/60/D/529/1993. For violations of Article 10 ICCPR, *Lewis v Jamaica* (1997) UN Doc CCPR/C/60/D/708/1996; *Chaplin v Jamaica* (1995) UN Doc CCPR/C/55/D/596/1994; *Brown v Jamaica* (1999) UN Doc CCPR/C/65/D/775/1997. On Jamaica's decision to cede from the ICCPR see Schiffrin, Natalie, *Jamaica Withdraws the Right of Individual Petition Under the International Covenant on Civil and Political Rights*, American Journal of International Law, 1998, 563.

This report is written with the conviction that the rightly celebrated restrictions on the use of the death penalty on the island should not be allowed to distract attention from the appalling conditions in which the vast majority of Jamaican prisoners, including the few currently under sentence of death, remain held. Perhaps surprisingly, given its traditional emphasis on penal politics, Jamaica's actual rate of imprisonment is not, comparatively speaking, particularly high. It is ranked 72nd in the world in this respect, incarcerating 174 people per 100,000 of its population (the United Kingdom is 86th with 153 per 100,000)⁶ Further, the proportion of the prison population who are awaiting trial is actually lower than in the UK, at 15%, ranking Jamaica 162nd in the world under this criterion. However, the island's penal system remains archaic and acutely overcrowded, and the volatility inherent in Jamaican politics and manifested in its crime rate has been repeatedly reflected by serious unrest and tragic incidents in its prisons. There have been two major domestic enquiries into incidents which resulted in the death of inmates and correctional officers at SCACC and Tower Street Adult Correctional Centre (TSACC) over the past 15 years.⁷ More recently, a fire at the Armadale Juvenile Detention Centre in May 2009 led to the deaths of seven young female detainees.⁸ It is therefore surprising that there has been no in-depth independent report by an external body or human rights group concerning the Jamaican prison population for some years.

As far as this report is concerned, as is explained below in the methodology section, due to administrative difficulties and the resulting limited time and access available, what started as an ambitious project to examine Jamaican prison conditions in general was turned into a shorter, more narrative and visceral description of the state of the Jamaican penal system. The report cannot, therefore, provide the kind of comprehensive independent investigation that the state of the Jamaican penal system so demands. However, despite the reduced scope of the project, it was nevertheless possible to gain access to parts of the system which had seemingly not been viewed by independent or critical eyes for some years. Upon touring the institutions, the feeling that the plight of the prisoners should be brought to the wider attention of the public, media, and human rights groups and lawyers was inescapable. It is hoped that the report might draw renewed attention to the conditions in which the vast majority of prisoners in Jamaica are held.

⁶ Statistics from the International Centre for Prison Studies at King's College London, <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/>.

⁷ *Report of the Board of Enquiry into Disturbances at the Tower Street Adult Correctional Centre and the St Catherine Adult Correctional Centre between 20th-23rd August 1997*. The Commissions of Enquiry Act Commission to Enquire into and Report on Recent Incidents at the St Catherine Adult Correctional Centre on May 21st Through to May 25th 2000. See also the section on homosexual inmates below.

⁸ 'Armadale Enquiry – More startling revelations turn up – Two girls were HIV-positive, others had psychotic episodes', Jamaica Gleaner, 10th September 2009, <http://www.jamaica-gleaner.com/gleaner/20090910/lead/lead7.html>.

2. Methodology

The report was conceived following previous work undertaken intermittently between 2002 and 2005 with death row prisoners in Jamaica. Having developed a research proposal and received funding from the Human Rights Lawyers Association, I travelled to Jamaica and worked out of The Jamaican Council for Human Rights (1998) Limited (IJCHR) for the month of August 2009.

Upon arrival, permission was sought from the Department of Correctional Services to undertake a project examining the conditions of detention in the island's penal facilities, in light of Jamaica's domestic and international legal obligations. A copy of the research proposal and covering letter explaining the nature of the project were sent to the then Commissioner of Corrections, June Spence-Jarrett.

I had previously been advised that any application for permission to access the island's penal facilities would be more likely to succeed if I waited until I arrived on the island to make it. However, while this approach eventually proved successful, it had the result that it was not possible to gain the permission until my final week working in Kingston. Many hours were spent on hold on the telephone being passed between various officials in the Department of Correctional Services and the Ministry of National Security in the first three weeks of August 2009 attempting to chase up the proposal. On one occasion I arrived at the Commissioner of Corrections Office for a scheduled appointment only to be told after an hour of waiting that she was not there. I was referred to a different official in a different department and put on hold so many times that the project began to feel like a Jamaican version of a Kafka novel.

On Friday 21st August 2009, as a result of intervention by Nancy Anderson, Legal Officer at the IJCHR, and Major Richard Reese, a former Commissioner of Corrections and the then Permanent Secretary in the Ministry of National Security, an official fax was received from the Commissioner granting permission for daylong visits the following week to each of the island's three largest penal institutions.

The delays in securing access and time restrictions, coupled with the extent of the access eventually granted, meant that the scope of the project was greatly curtailed. It was not, for instance, possible to visit the adult women's prison at Fort Augusta, the inland medium security facilities of Richmond Farm and Tamarind Farm, any of the island's juvenile detention centres, or the local remand police lockups. Nor was it possible to analyse in any significant depth the quality of medical and dietary provision at the institutions visited. While making observations as to the latter, this report therefore focuses chiefly on the physical conditions in which the majority of adult male Jamaican inmates are housed.

One-day visits were made during the week of 24th-28th August 2009 to SCACC, TSACC, and the Horizon Adult Remand Centre ('HARC'). These three maximum-security facilities together hold around 70% of the island's entire prison population. The Superintendent of each of the prisons was asked to complete a questionnaire providing statistical and other information on their institution. During the daylong visits, full access was granted to all areas. At each facility, a member of staff was assigned to guide me round the institution. By the time of the visit to HARC on Wednesday 26th August, I had received permission from the Department of Correctional Services to be accompanied on my visit by two interns from the IJCHR. However, this was not possible at SCACC or TSACC. Aside from footnoted references to extraneous sources, this report is based entirely on notes taken while touring the institutions. These include the notes of Jesse Nicholls and Admas Habteslasie from the day at HARC. Cell measurements were taken with tape measures, inmate numbers were gleaned from muster boards, and sanitary facilities and cell numbers were literally counted out by hand. Correctional Staff were invariably extremely helpful and, to the best of my knowledge, candid. The project was concluded with an extremely short interview with Commissioner June Spence-Jarrett. I had hoped that there would be an opportunity to hear her thoughts and comments on the state of the Jamaican penal system and the conditions depicted in this report. Unfortunately however, the meeting was so short that the only information of interest which emerged from it was the confirmation that there do exist plans for a new 'superprison' on the island but that they have been shelved due to a lack of funding.⁹

3. International Obligations and Statutory Framework

International Obligations

As mentioned in the introduction to this report, Jamaica is a signatory to the ICCPR. Article 7 of the Covenant prohibits torture or cruel, inhuman or degrading treatment or punishment. Article 10 is specific to penal systems:

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

⁹ See p.50 below.

2. (a) *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*

(b) *Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*

3. *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*

Jamaica had also ratified the first Optional Protocol to the International Covenant on Civil and Political Rights, permitting nationals to make individual complaints to the Human Rights Committee. However, in 1997 the Government denounced the Protocol and withdrew from the jurisdiction of the Committee. Jamaica is also not a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Jamaica is a state party to the American Convention on Human Rights ('ACHR'), but it does not recognise the competence of the Inter-American Court of Human Rights. Article 5 of the ACHR enshrines a 'Right to Fair Treatment' which contains the following relevant prohibitions and requirements:

1. *Every person has the right to have his physical, mental, and moral integrity respected.*

2. *No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.*

3. *Punishment shall not be extended to any person other than the criminal.*

4. *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.*

5. *Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.*

6. *Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.*

In addition, the United Nations Standard Minimum Rules for the Treatment of Prisoners ('SMR') lay out a detailed series of specific substantive requirements for conditions of detention. While the SMR were established as long ago as 1955, are not legally binding, and themselves contain the caveat that they '*seek only, on the basis of contemporary thought... to set out what is generally accepted as being good principle and practice*', they nevertheless provide important legal and moral guidance when assessing penal standards. This

guidance is lent greater legal weight by a growing body of international jurisprudence in which the SMR have played an increasingly important interpretative role where prison conditions have been found to breach general prohibitions on inhuman and degrading treatment.¹⁰

Domestic Law

i. The 1962 Jamaican Constitution

The 1962 Constitution contains the supreme law of Jamaica. Section 2 of Chapter I determines that any laws which are inconsistent with the provisions of the Constitution shall be void to the extent of the inconsistency.

Chapter III of the Constitution governs fundamental rights and freedoms. Section 17 of Chapter III provides that *'No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.'*

ii. The Corrections Act and the Correctional Institution (Adult Correctional Centre) Rules

As regards primary legislation, the Jamaican penal system is governed by the Corrections Act of 1985. The Act established the office of Commissioner of Corrections and renamed the island's prisons as *'Correctional Centres'*. It is a lengthy piece of legislation which governs the general administration of the island's penal system. Inter alia, it contains chapters covering the release and transfer of inmates, categorisation, discipline and punishment, and rehabilitative schemes. The Act further contains provisions relating to probation and the *'after-care'* of inmates, establishes an Advisory Council on the Treatment of Offenders and a Board of Visiting Justices, and makes provision for the inspection of the penal institutions.

Section 81 of the Corrections Act conveys a power upon the Minister of National Security to *'make rules (in this Act referred to as Correctional Institution Rules) generally for the good management of correctional institutions and the control of inmates and for carrying out the objects of this Act'*.

The Correctional Institution (Adult Correctional Centre) Rules were established under this power in 1991. The Rules provide a more detailed subsidiary framework for the day to day administration of adult correctional centres. They contain provisions setting out the roles and duties of specific members of staff, including superintendents and medical officers, and supplement the provisions of the Corrections Act regarding transfer,

¹⁰ See for instance *Peers v Greece* [2001] 33 EHRR 1192, *Kalashnikov v Russia* [2003] 34 EHRR 36, and in the UK *Napier v Scottish Ministers* [2005] 1 SC 229.

categorisation, and discipline. Both the Rules and the Corrections Act contain specific provisions on the treatment of inmates under sentence of death.

It should also be noted that, with limited exceptions relating to accommodation and clothing, neither the Act nor the Rules convey positive rights on the prisoners to certain standards of treatment. They are on the whole administrative and procedural. There is some overlap between the two, and as regards certain provisions, there appears to be little reason why one should be contained in the piece of primary legislation, but another should merely form part of the Rules. The legislation as a whole appears to have been drafted in a somewhat haphazard fashion.

The Specific Complaints section of this report details numerous breaches of both the Corrections Act and the Adult Correctional Institution Rules. However, while the Corrections Act covers the penal system as a whole, subsection 6(3) of the Act specifies that the Rules apply only to adult correctional centres, and not remand centres or lock ups. Any complaints made regarding HARC are thus made in relation to the Corrections Act and international obligations only. Nevertheless, the Correctional Institution Rules *do* apply to remandees held in correctional centres (see Rule 189(1)), and it is submitted that they provide valuable guidance on the minimum standard of treatment to be expected, whether in specialist remand accommodation or not.

OBSERVATION REPORT

By James Robottom

PART TWO:
St Catherine Adult
Correctional Centre
and Tower Street Adult
Correctional Centre

1. Introduction

SCACC and TSACC are the two largest correctional centres in Jamaica. Whilst SCACC is significantly the older of the two, and the only penal institution on the island to house condemned inmates, the two prisons have much in common. Both have maximum security status, and the general living conditions of prisoners are very similar: inmates are housed most commonly in groups of 3 (but in some cases up to 5), in small cells designed for single occupancy, with no electricity, toilet, or running water. There are no windows in the cells, and no beds or bunks. Inmates lucky enough to be provided with a thin sponge mattress simply lay it on the floor, if they can find the space to do so.

Given the relatively narrow nature of this project, after a short introduction to each prison, the two will be described together in this chapter under specific headings regarding the different aspects of prison existence (cell conditions, punishment, rehabilitative schemes, medical treatment, etc). Noteworthy and unique areas or aspects of the two institutions will be referred to and described individually, and where the two institutions differ, this will be pointed out. It is hoped that this format will allow the individual features of each institution to come to the fore, whilst preventing lengthy repetition of the numerous features that SCACC and TSACC share.

2. The Institutions

St Catherine Adult Correctional Centre

SCACC is Jamaica's oldest, and second largest penal facility. It lies on White Church Street, near the heart of Spanish Town, one of Jamaica's historic colonial capitals. The prison is flanked to the south by modern shopping arcades, Spanish Town police station, and the bustle of the city. Its northern wall is overlooked by the white tower of Spanish Town cathedral, which peers incongruously over the guard posts and razor wire. On approaching and entering the prison one is struck immediately by its age. St Catherine District Prison was built in 1655 – during the Royal Protectorate of Oliver Cromwell – in order to house up to 320 African slaves who were to be sold on to the island's plantation owners under the colonial slave trade. Following abolition, in 1840 the prison came under the newly formed administration of Her Majesty's Prison Department of Jamaica. During both the nineteenth and twentieth centuries additional blocks were added to the initial three built on the site, expanding the official capacity to its current figure of 691 inmates. In 1898 a gallows was erected at SCACC, and the hanging of convicted murderers was moved to the prison. Although the last execution in Jamaica took place in 1988, death row remains at SCACC, as do the gallows, ready in case

hangings should be resumed, in a walled compound immediately to the right as one enters the main gate.

At the time of the visit SCACC was holding around double its official capacity of 691, at 1285. As at TSACC, extreme overcrowding is a chronic feature of life at SCACC. The average population of the prison in 1991, for example, was 1307. Disturbances and unrest at the institution have prompted two Jamaican commissions of inquiry over the last 15 years,¹¹ and Amnesty International and the United Nations Human Rights Committee have drawn attention to inhuman conditions and maltreatment at St Catherine on several occasions,¹² albeit not recently. In 1995 Gerald Kaufman MP commented to the UK Parliament that *'death row (in Jamaica) is one of the most abominable places that I have visited in my life'*.¹³ In 1992, the Governor of Shepton Mallet Prison in the UK described St Catherine as *'the worst prison I have ever seen'*.¹⁴

Tower Street Adult Correctional Centre

TSACC is the largest prison in Jamaica, with a capacity of around 900. Like St Catherine Adult Correctional Centre, it constantly holds around twice its official capacity, with 1663 inmates incarcerated at the time of the visit. I was informed by an officer that the highest ever number of prisoners held by the prison was 1825. The fact that several of the correctional officers remembered the date on which this figure was reached – the 18th February 2003 – is testament to how much the overcrowding at the institution affects both inmates and staff alike.

TSACC, known locally as General Penitentiary or simply G.P., is very much a 19th century prison in appearance, with high red brick walls, and a central turreted tower which rises imposingly over the main gate. It is a more compact prison than SCACC. Upon entering the main gate one either is led through a labyrinthine series of stairwells and corridors to the Superintendent's office, or through several gates and fenced areas towards the cell blocks themselves. The prison is situated in the heart of the poor downtown area of Rae Town in southeast Kingston. Its southern wall leads directly on to the sea. It was not possible to ascertain an exact date for the opening of the prison, although the mid-19th century was suggested by officers, who also stated that the institution originally had connections with the slave trade, and that inmates were shipped directly in and out of the prison via a jetty on the seafront.

¹¹ Report of the Board of Enquiry into Disturbances at the Tower Street Adult Correctional Centre and the St Catherine Adult Correctional Centre between 20th-23rd August 1997, and The Commissions of Enquiry Act Commission to Enquire into and Report on Recent Incidents at the St Catherine Adult Correctional Centre on May 21st Through to May 25th 2000.

¹² See UN Human Rights Committee, CCPR/c/79/add.19th November 1997, Amnesty International, *Jamaica: New Concerns: Fear of Torture/ Ill-treatment, medical care, prison conditions*, AMR 38/005/2000.

¹³ Hansard, House of Commons debates, 18th October 1995, column 318.

¹⁴ Quoted *ibid*, column 319.

TSACC has an infamous local reputation as being overcrowded and dangerous. It has seen several incidents of unrest in recent years, including being the prime focus of the terrible prison riot of 1997, during which several inmates died.¹⁵ However, possibly due to the attention that the death penalty has drawn towards SCACC, TSACC has not always received as high a degree of scrutiny from both international and local human rights groups.

3. Conditions

Death Row

The use of the death penalty has been severely curtailed in Jamaica over the last 15 years, due to a series of Privy Council judgments placing procedural restrictions on its deployment. Most recently, the number of condemned men at SCACC fell dramatically following the 2004 decision in *Lambert Watson* that the mandatory death penalty for capital murder was unconstitutional.¹⁶ Following the judgment, every condemned inmate was re-sentenced under discretionary criteria. Including the re-sentencing, very few sentences of death have been passed since. At the time of the visit to SCACC there were eight male inmates on death row, five of whom had recently had their sentences commuted to life imprisonment by the Governor General,¹⁷ and were due to be taken off the section once the requisite formalities had been completed.

Death row at SCACC is located towards the centre of the institution's grounds, in the two-storey Gibraltar building, which was built in 1898. Viewed from the outside Gibraltar is a long and thin grey stone block, with a dilapidated slanting corrugated zinc roof. It is divided into four cellblocks, Gibaltars 1 and 2, which are the first and ground floor blocks on the north side, and 3 and 4, their counterparts on the south side. Gibaltars 3 and 4 are used as standard accommodation for determinate and life sentence prisoners. The building originally consisted of just two blocks, on the ground and first floor; but horizontal walls built to halve the length of the corridors and to isolate those prisoners who were sentenced to death later separated the north and south sides of the block. Prior to the decision in *Lambert Watson*, death row inmates were housed on both Gibraltar 1 and 2. However, the substantial fall in numbers of condemned men at SCACC, combined with the pressures of overcrowding at the institution, has meant that Gibraltar 2 (the ground floor) is now used as a '*punishment block*' instead. Nevertheless the two north blocks remain fenced into their own compound, with a small exercise area to the left, and a staircase running outside the front of the building from one floor to another.

¹⁵ See the section below on homosexual inmates.

¹⁶ For instance, at the end of March 2004 there were 43 inmates sentenced to death at SCACC.

¹⁷ Having each served over five years on death row, according to the Judicial Committee of the Privy Council's decision in *Pratt and Morgan v Attorney General of Jamaica* [1994] 2 AC 1.

The physical structure of each block on Gibraltar is identical. Each can house a maximum of 26 inmates, with 13 cells facing inwards on either side of a central corridor. Section 41 of the Corrections Act dictates that *'Every inmate under sentence of death shall be confined apart from other inmates in a special cell, and shall be under constant supervision day and night.'* No condemned inmates therefore share cells. The cells are separated by thick stone walls, and have grilled metal bars at the front. Each cell measures approximately 1.75 metres in width by 3.5 metres in length, with high ceilings around 3 metres from the ground. None of the cells have windows. The only ventilation in the cells comes from the barred entrances leading onto the corridor and barred, rectangular vents, around 10 centimetres high by 1 metre wide, which are positioned above head height on each cell's back wall. The latter provide the only access to fresh air in each cell, but they are also open to the elements, and inmates complain that during storms rain often blows in.

i. Bedding

Each death row cell used to contain a solid concrete cuboid bunk on which the inmates slept. However, at some stage over the past few years, these were all destroyed (apparently due to concerns that inmates were concealing forbidden items in them) and the inmates now place their thin sponge mattresses – if they are lucky enough to possess them – on the stone floor. At the time of the visit, three of the eight condemned inmates were without mattresses, and were forced to sleep on top of either thin sheets, or merely cardboard, which they place on the hard floor. The majority of the mattresses are old and worn, with the sheet covering the sponge coming away; they are often covered in mould and falling apart, reflecting both the dirty and unsanitary conditions in the cells and the inability of the institution to provide new bedding. Whether an inmate possesses a mattress or not, the lack of beds or bunks and the thinness of the mattresses available means that inmates sleep very close to the stone floor, which is invariably dirty. One of the most frequent complaints from inmates is that they are covered in insects, such as cockroaches, ants, and bedbugs, while they sleep, and whilst they are locked down in general.

At the time of the visit, one condemned inmate – rather surprisingly – possessed a bed. It should be emphasised that this is incredibly unusual in SCACC, and usually a privilege reserved for orderlies and senior inmates. It is illustrative of the arbitrary nature of the cell conditions of the inmates in the institution as a whole. Much depends on what an inmate's family or friends are able to provide for them, and what amenities they can afford to purchase inside the prison. While this might be expected to a certain extent with regard to items that might be considered luxuries, the inability of Correctional services to provide basic living necessities such as clothing, bedding, and toiletries means that while all the inmates languish in abominable conditions, a lucky few are able to make their suffering a little more tolerable.

ii. Light

The only natural light in the cells in Gibraltar 1 – the upper section – comes from the small, narrow vents at the back of the cells, and from the roof, which is in a state of some disrepair, and allows a limited amount of light on to the corridor of the section during the day. Little of this light, however, permeates the cells themselves, which remain very dimly lit, despite the invariably bright Jamaican sunlight outside. Without electrical light, it would be impossible to read in a cell during the day.

However, none of the cells in SCACC contain electrical sockets or lights. On Gibraltar, as on most blocks in the institution and in TSACC, there are two electrical sockets on the wall *outside* each cell. From these sockets, the inmates run bare electrical wires into their cells and connect them to light bulbs. The prison does not provide bulbs, nor make any available to purchase, so inmates are dependent either on provision from outside the institution or on purchasing them from each other on the black market. Even then, a single bulb does not provide sufficient light within the dark stone walls; the more fortunate inmates will therefore run several wires into several bulbs to add more light. During the visit all death row inmates did have working bulbs in their cells. However, as will be seen below, inmates are sometimes denied use of the electrical sockets as a form of punishment. Access to light within cells in the institution is therefore not only highly dangerous in terms of risk of electrocution, but is also seen as a privilege, rather than a right.

iii. Sanitation

None of the cells in SCACC have toilets inside. Inmates use slop buckets when locked down, and empty them into pit toilets (or '*appas*' in Jamaican patois), during the periods in which they are allowed out of their cells. When entering Gibraltar 1 or 2, as with many other sections in the institution, the heat and stench can be overwhelming. There are two toilets half way down the corridor of each section of Gibraltar. However, on death row neither toilet works, so inmates use the pit toilets outside on the fenced compound. These are in a state of chronic disrepair, covered in flies and mould, with rotten paint and pieces of stone coming away. As with other toilets in the institution, when the sewage plant housed on the SCACC site breaks down (which, I was informed by an Overseer, does happen relatively regularly), they become blocked and can overflow, spilling excrement into part of the small area in which the inmates of Gibaltars 1 and 2 bathe and exercise.

There are two washrooms at the end of the corridors on Gibraltar 1 and 2. Like the toilets on death row, neither of the washrooms works. They contain merely broken stone and debris and dirt. Instead inmates both bathe and wash their clothes outside on the compound, taking turns to use a tap outside. The tap, however, is not housed in a proper washroom or shower unit but is open to the elements, and no privacy is available.

Clothes are then hung to dry inside the inmates' cells, making them even more cramped and damp – one often has to crouch under makeshift washing lines even to get into a prisoner's cell.

The condemned inmates' drinking water comes from the same tap that they use to bathe and wash their clothes. Inmates collect plastic receptacles (empty soda bottles, buckets, anything they can find or receive from relatives) in their cells and fill them during their exercise/washing period; they then carry them back to their cells to use to drink and/or wash when locked down. Again, the fact that the prison authorities are not able to provide water vessels means that some prisoners are able to 'catch' far more water than others. As death row inmates are confined to their compound and are permitted less time out of their cells than the rest of the prison population, they are also less likely to be able to secure sufficient drinking water to sustain themselves in the hot Jamaican climate (the cells can reach almost unbearable temperatures during the day).

iv. Time out of cell/Exercise

During the visit to Gibraltar 1 a condemned inmate was sweeping the section and expressed pride that he was permitted to do so by the correctional officers. To a certain extent, the death row regime seems to have relaxed slightly since previous visits, presumably due to the fall in the number of condemned men. However, the amount of exercise and time out of cell permitted to death row inmates remains at the discretion of the Superintendent under the Correctional Institution Rules (Rule 188(2)). Death row inmates are thus not included in the standard regime for the majority of the prison's population. I was informed that the condemned men generally receive around two hours out of their cells each day, though this can vary according to the situation in the institution on any given day. On days when cell searches are taking place in the prison for instance, considerably less than two hours may be permitted.

Another major issue regarding time spent out of cells and exercise periods is the size of the exercise yard available to condemned inmates. Those on death row share their outside space with the inmates on the punishment block (Gibraltar 2) beneath them. However, unlike the rest of the population of SCACC, the inmates of Gibraltors 1 and 2 are not allowed off the fenced in compound that surrounds their block unless in special circumstances, such as to be visited by their legal advisor or to visit the medical centre. Although I was not able to ascertain the exact number of inmates on Gibraltar 2, there were at least 30 prisoners on the two sections combined. These inmates have a dirt yard of approximately 5 x 10 metres in which to exercise. The only other spaces available to them are the small space between the fence at the front of the compound and the entrance to the block, and a tiny alleyway running down the block's side. The amount of space available (around 1.6 metres per person) is clearly grossly insufficient for the number of inmates who are forced to use it. At the time of the visit there were inmates everywhere on the compound trying to find a little space in which to eat (breakfast was

being served), exercise, or relax, or merely be outside the hot and oppressive block in the open air; two were even keeping up a football in the alleyway, which is barely a metre wide.

General Population

i. Regime:

The general populations of SCACC and TSACC share a broadly similar regime:

- Inmates are mustered at around 6.30-7am.
- They are unlocked at around 8.30-9am, permitted time to slop out, to bathe, and to collect water.
- Breakfast is then served.
- Inmates are then permitted time out of their cells to exercise or take part in activities until they are again mustered and receive lunch at around 11.30am-12pm.
- After lunch inmates are again permitted time out of their cells.
- Inmates are then permitted to collect more water, and supper is served around 3pm.
- Lockdown until the next morning takes place at around 3-3.30pm.

Inmates are thus permitted around five or six hours outside their cells each day, although this includes time to bathe and to collect water. Whether they are locked down during lunch depends on staffing levels and the individual institution. At all other times, the inmates exist in the conditions described below.

ii. Cell Conditions

Although the structure of the cell blocks at SCACC and TSACC differs somewhat, the similarities between the cells are such that it is useful to give a general description of cell conditions at the two institutions, before a narrative description is given of an individual block at each. The cells generally accord with the description of a death row cell given above, although single occupancy is rare in the general population.

Each cell at SCACC and TSACC measures around 1.5 x 3 metres² with a relatively tall ceiling, which can be around 2.5-3 metres high. The walls and floor are hard stone. There are no beds in the cells.¹⁸ Inmates sleep either on thin sponge mattresses, or cardboard, or simply against the stone itself, with a sheet if they possess one. The Correctional Institution Rules require that that each prisoner is provided with adequate bedding,¹⁹ but it is acknowledged by Correctional Services that, due to lack of resources, this is not always possible, and many prisoners have no bedding to speak of whatsoever.

¹⁸ With very limited exceptions for inmates who have gained exceptional privileges, such as orderlies.

¹⁹ Rule 144.

There are no toilets in any of the cells, inmates are required to slop out, and each has a bucket for this purpose. None of the cells have running water. The amount of drinking water available to an inmate is dependent on the volume of receptacles he can collect and retain in his cell in which to carry it. None of the cells have windows; some have a small barred vent high up on the rear wall of the cell, as per the description of death row given above. Other than that, the only ventilation comes from the barred door at the front of the cell, which depending on the block and the institution, may lead onto an internal corridor running between two rows of cells, or onto an external corridor running along the front of a single row of cells and facing out into the open air. On certain blocks, the front doors to the cells are solid, and so permit no ventilation – or light – to penetrate the cell at all.

None of the cells have light sockets or working electricity inside. There are electrical sockets on the walls outside many of the cells, and if permitted and able to afford light bulbs, inmates may run bare wires from the sockets into bulbs in their cells to provide themselves with light during the 18 hours a day they spend locked down. If not able to use electric light, inmates, dependant on the cell block they inhabit, may be able to rely on the small amount of light that might come from the front door of the cell in the daylight hours. The provision of light is, therefore, an arbitrary process, and carries with it obvious safety risks.

Whilst every cell at SCACC and TSACC is intended for single occupancy, the norm is to have 3 inmates sharing a cell. Accordingly, each inmate is afforded around 1.4 metres² in which to sleep and spend the majority of his day. In some cases, up to five inmates share a cell of the same size described. In a cell containing five men, each has a tiny 0.8 metres² in which to exist. The European Committee for the Prevention of Torture recommends a *minimum* of 4 metres² cell space per prisoner. This would be roughly equivalent to each Jamaican inmate having his own cell. However, without a new prison being built, this is simply a logistical impossibility in Jamaica.

The Correctional Institution Rules specify that every inmate should occupy a single cell, but acknowledge that, due to lack of available accommodation, this may not be possible. However, they specifically prohibit the sharing of a cell by more than three persons:

147(1) Accommodation in an adult correctional centre may be either in cells or in dormitories and, subject to the provisions of paragraph (2), where the accommodation is in cells, every inmate shall occupy a separate cell.

(2) Subject to any regulations made under section 82 of the Act with respect to the management and operation of correctional institutions, where by reason of lack of accommodation in the adult correctional centre or for medical or other reasons it is necessary that inmates be associated, then, not more than three inmates (none of whom shall be under sentence of death) shall be permitted to occupy one cell.

It does not appear that, in accordance with 147(2), any regulations have ever been passed under the Corrections Act permitting the incarceration of more than three inmates in a single cell. Cells of more than three inmates are thus in clear breach of Rule 147.

In some cells in both institutions the overcrowding is such that hammocks are constructed and hung from the bars at the front of the cell and the grilled vent at the rear. The use of hammocks is against institution rules, but a necessity in the overcrowded cells so that the inmates have a space in which they can all lie down at once. The hammocks are clearly extremely dangerous. Firstly, in order to hang them tautly from the vent at the rear of the cell, they must be around 2.5 metres from the ground, meaning that the inmates must struggle to get into them, and run the risk of injury from falling on to the hard stone floor at night (or injuring their cellmates by falling upon them). Secondly, the hammocks themselves are often constructed on a makeshift basis, using whatever materials are available to the prisoners – one made using a tarpaulin sheet was fraying in several places and clearly about to break.

Severe overcrowding is the dominant feature of life at TSACC and SCACC. It carries with it obvious implications regarding health and also the safety of inmates. It should be remembered that all the observations made in this report should be seen in the context of the fearful heat of the Caribbean climate. It is submitted that, to confine three men to a cell designed for one person, in the circumstances described above, amounts in and of itself to a form of inhuman and degrading treatment.

SCACC: New Hall and South Block

New Hall and South Block, built in 1840, are the two most imposing buildings at SCACC. While New Hall is significantly the larger of the two, in all but size they are identical: tall, thin, free standing three-storey blocks built of light-coloured cut stone. At either end of the first and second floor sections' central corridors, a barred archway looks out upon the grounds of SCACC. When not locked down, unoccupied inmates hang their arms out of the archways and shout to their fellow prisoners down below.

When entering the blocks one is plunged into near total darkness, apart from on the top floor, where a small amount of daylight creeps in through the zinc roof. The wire fences that have been built above the cells between the walls and the roof on the top floor to prevent pigeons flying onto the block are coming away. Pigeons are therefore able to enter the block freely. They perch atop the cells; and the walls and doors at the front of the cells are covered in their faeces. Access to the upper sections is by slippery, rusting metal staircases built into the central corridors, which are clearly dangerous. Inmates hang bright coloured clothes to dry from railings which peer down over balconies into the open centre of the block. During the visit to New Hall the inmates on the ground

floor section were frantically having to mop up water pouring down from the sections above.

In New Hall and South Block it is the norm to have three or more inmates to a cell. Some lifers and those deemed troublesome might be put in their own cells, but the general numbers speak for themselves: at the time of the visit New Hall housed 349 prisoners in 182 single cells, and South Block 177 prisoners in 66 single cells. I saw several cells of four, and correctional officers confirmed that there are also single cells housing five inmates. Prisoners described how they would sleep top to toe lengthwise, with another lying horizontally at the rear of the cell, and often yet another in a hammock above them. It is hard to imagine how it would ever be possible for the inmates to sleep in such overcrowded conditions – even more so when the overwhelming heat and lack of ventilation are taken into account.

Several inmates complained in New Hall that they were not permitted to use the lights they had wired into their cells between 6am and 6pm, and that – somewhat bizarrely – they were therefore able to read and see each other at night, but not during the day. An officer confirmed to me that the prison was indeed trying to save electricity in this way. Another complaint, which was common throughout all the institutions visited, was that the cells were infested with insects.

Upon leaving New Hall, a series of prisoners approached me to complain vociferously about their conditions, as they had been told I was visiting to examine them. They were soon joined by many others, and an impromptu debate took place between the correctional officer who was guiding me round the institution and the inmates of New Hall. The inmates' concerns ranged from overcrowding, to the provision of electricity, to sanitary facilities. The correctional officer attempted to explain that a lack of resources at Correctional Services meant that SCACC simply could not afford to improve the conditions in which they found themselves, even referencing the global recession and the resulting economic stress on the Jamaican government. The inmates, shouting over each other in an attempt to be heard, replied that they were only seeking the most basic of living necessities and human rights. The inmates clearly had a lot of respect for this particular officer, and the debate remained fairly calm, but the incident provided a fascinating insight into the views of the inmates, and the way in which they interact with the prison staff. It also demonstrated the enormous pressures and tinderbox atmosphere in which the prison staff have to work, and the inmates have to live.

TSACC: North Block

Immediately after entering the main gate at TSACC, one finds oneself in a compound surrounded by a razor wire facing a long wall of a building, underneath which one walks to access the rest of the prison. This is North Block, a long cramped two-storey block of

cells facing to the north and the south, with walls painted light blue and yellow, and a slanted, rusting, corrugated iron roof. North Block is the largest building at TSACC; it contains eight sections, four on each side of the building. Each section contains 40 cells. Thin open corridors supported by dilapidated pillars run the length of the building in front of the cells on both floors. When an inmate steps onto the corridor in front of his cell, there is no outer wall in front of him (although on the first floor there is a railing). He is sheltered only by the ceiling above him, and his cell is thus open to the elements during the hurricane season (June to November, each year).

During the visit to North Block, at around half past nine in the morning, the inmates were still bathing and collecting water before breakfast; some were milling around talking. Although they are allowed out of their cells in staggered groups, the sheer number of inmates on each section meant that the block was extremely cramped and claustrophobic. The vast majority of cells on North Block house three men. There are thus around 120 men per section. There were a few fours; the officers could not say for sure whether there were any fives at the present time, but confirmed that there certainly had been in the past. The cells in the block are among the smallest I saw on the island. Some of the inmates had mattresses, but few had sheets. When talking to three inmates who remained locked down in their cell, it was difficult to imagine how they could possibly spend a night trapped in the dark, inadequate, and dirty space. One sat on the floor, while two others stood over him, leaning over one another to speak to me, all three peering out from behind the rusting, metal bars of the thin gate.

Once informed by the officers that I was examining the conditions in the prisons, the inmates crowded round to tell me about the aspects of their existence that most aggrieved them: the open gutter running along the front of the cells, filled with stagnant water and rotting food, the places on the corridor ceiling where plaster was coming away and risked falling on the inmates, the insects that infested their cells. On one section, the inmates led me to the washing area at the end of their block. It was disgusting. There was one shower pipe – to be shared between over 120 inmates – and three toilets, in an open, unroofed area, with low stone walls dividing the cubicles and shower. The stone was broken and crumbling, and covered in mould and fungus. The stench of the toilets was overpowering. The inmates had improvised a screen by placing a sheet over the walls to retain their modesty. I had felt uncomfortable about inspecting the washroom while inmates had their only opportunity to use it for the day, but I was physically led down to it by the prisoners, who were keen to show the terrible state it was in. As they queued to use the shower and toilets, it looked as though they were standing in a 19th century ruin.

Punishment

The Corrections Act specifies punishments which, in certain circumstances, may be inflicted upon inmates found guilty of '*correctional centre offences*'. Under Section 35(1),

if an inmate is found guilty of a ‘major correctional centre offence’²⁰ on an inquiry before the Commissioner of Corrections, the Commissioner may impose any or all of the following punishments:

(a) reduction of diet to No. 1 punishment diet for any period not exceeding fourteen consecutive days;

(b) reduction of diet to No. 2 punishment diet for any period not exceeding twenty-one consecutive days;

(c) suspension or postponement of any privileges for any period not exceeding ninety days;

(d) forfeiture of remission for any period not exceeding ninety days;

(e) in the case of the offences of mutiny, incitement to mutiny or taking part in any assault or attack on any member of staff, medical officer or any other person providing health care to inmates, solitary confinement for a period not exceeding ninety days and, if the Governor-General in his discretion so approves, the loss of the whole or any period of remission.

Upon being found guilty of a major or minor correctional centre offence²¹ on an inquiry before the superintendent of a prison, the superintendent may impose the same punishments, minus the provision for solitary confinement, and with the length of the other punishments being restricted to shorter periods. It is therefore only the Commissioner who has the power under the Corrections Act to impose solitary confinement as a punishment, and then only for a limited class of ‘major’ offences.

The Act provides procedural safeguards for an inmate punished under the rules. Section 36 specifies that an inmate shall not be punished without having been afforded an opportunity to hear the evidence against him and to make a defence. Section 38 provides an inmate with a right of appeal to the Commissioner from a sentence imposed by a superintendent within 72 hours of such a punishment being ordered. However, it does not appear that there is any provision for a right of appeal from the imposition of a punishment by the Commissioner.

²⁰ Rule 35(4) state that a ‘major correctional centre offence’ means:

^(a) mutiny or incitement to mutiny;

^(b) escape or attempt to escape;

^(c) taking part in any assault or attack on any member of the adult correctional centre staff, medical officer or any other person providing health care to inmates;

^(d) aggravated or repeated assault on any other inmate;

^(e) willful destruction of property belonging to the adult correctional centre;

^(f) willfully causing to himself any illness, injury or disability;

^(g) persistent repetition of any minor correctional centre offence.

²¹ A minor correctional centre offence is any breach of the institution rules, which is not also a major correctional centre offence.

It is important to note that those listed above are the only punishments provided for by the Corrections Act. There is no provision for permanent removal to a 'punishment block' with restricted access to exercise and facilities, or for the prevention of the use of electric light, as is the current practice at SCACC and TSACC. The SMR provide with regard to the punishment of prisoners that:

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

It is submitted that the punishment sections at SCACC and TSACC, as outlined below, are maintained in breach of both the Corrections Act and the SMR, and that the conditions imposed as a punishment constitute inhuman and degrading treatment or punishment.

i. SCACC: Gibraltar 2

As mentioned previously, as a result of the dramatic fall in the number of condemned men in Jamaica in recent years, Gibraltar 2, formerly the lower floor of death row at SCACC, is now used as a punishment block. The basic cell layout and structures on Gibraltar 2 are identical to those on Gibraltar 1. However, while its first floor counterpart does receive a certain amount of daylight (although only on account of its dilapidated roof), upon entering Gibraltar 2, one is plunged immediately into darkness, despite the invariably bright sun outside. The only daylight comes from the doorway at the front of the section, and the tiny individual vents at the back of each cell. Long thin halogen bulbs do run along the ceiling of the central corridor on the section. However, the light provided by these lamps is barely sufficient to light the corridor of the section in the daytime, and certainly does not penetrate inmates' cells.

The conditions on the 'punishment block' raise questions about the nature of the punishment being inflicted on the prisoners of Gibraltar 2. In clear breach of the SMR, prisoners in some cells were forbidden from having lights in their cells as part of their punishment. In breach of the Correctional Institution Rules, two of the inmates had been in unlit cells of three for over six months, and some had not been informed why they were there, let alone permitted to raise a defence. The punishment inflicted upon the inmates was thus arbitrary as well as inhuman and degrading.

ii. TSACC: 'Security Block'

Towards the end of my visit to TSACC, I was asked if I wanted to see the 'security block', in which prisoners were placed for punishment purposes. Afterwards, having seen the cells, I was actually surprised that my attention was deliberately drawn to it. Along with the mentally ill section at SCACC, the punishment block at Tower Street was the most shocking thing I saw during my visits to Jamaican prisons.

In order to enter the block, one passes through a spacious hallway, presumably used for meetings or activities, which gives absolutely no indication of what is to come next. At the rear of the hallway, two inmates were standing around talking animatedly to correctional officers. As I approached, they were keen to lead me in and show me the atrocious conditions in which they were imprisoned.

Through a doorway at the rear of the hall lies a small section, where five separate cells can be entered only if one crouches through low short entranceways built into the wall.

Inside is complete blackness. I could not see my hands. The cell was fairly large, and the minimal amount of light coming from the low entranceway made no difference once one took two steps inside. After some shouting in patois between the prisoners on the section and the correctional officers, the prisoner whose cell it was exited while I remained in the cell. He returned shortly after, lit a piece of newspaper he had retrieved, and threw it into the corner of the cell so that we could see.

The cell measured 3 by 4 metres. There were no windows, and no ventilation whatsoever. A small circular vent around 10 centimetres wide on the back wall of the cell was blocked. The lit newspaper seemed to have fallen into a disused shower basin in the corner of the cell, suggesting that it had perhaps once had running water, but it was hard to tell in the dim light, despite the fact that the prisoner kept burning more and more paper. There was no bedding at all in the cell, save for a piece of dirty cardboard, and it was unbearably hot, far hotter than the standard cell blocks. The cell was damp, and it was filthy. The inmate whose cell it was was sweating heavily and barely clothed due to the heat.

Four inmates were housed in these conditions on the 'security block'. They stated that on a good day they would be permitted one and a half hours outside their cells, but more normally they were allowed a quarter of an hour out in the morning, and around twenty minutes in the afternoon, in order to wash, slop out, and find a little time to see some daylight and to exercise. The inmates had been held in the block for up to two months. Two complained, as at SCACC, that they had not actually been properly informed as to why they were there. There was even some suggestion that one of them might have been put there for his own protection, rather than as a punishment.

Confinement in these conditions is in clear breach of Rule 31 of the SMR. While section 35 of the Corrections Act does authorise the punishment of prisoners by solitary confinement for up to 90 days, it was surely not envisaged to permit detention in the appalling conditions on the ‘*security block*’, which, it is submitted, constitute inhuman and degrading treatment or punishment, regardless of the duration for which they are inflicted. Further, it does not appear that the prisoners were ever afforded the opportunity to make a defence, and whether or not the Commissioner had authorised the punishment, as required, was uncertain.

Vulnerable Inmates

This section will describe the conditions in which homosexual inmates and those suffering from mental illness are held in SCACC. As regards TSACC, ‘*homosexual inmates*’²² are held in very similar conditions there, in a separate block isolated from the main population. The mentally ill at TSACC are housed in the ‘*George Davis Centre*’, a special area separated from the main area of the prison. The area has a large garden, in which the inmates grow produce, and its own dormitory. The conditions are far superior to those at SCACC which are described below. Nevertheless, the mentally ill inmates at TSACC who are too vulnerable to sleep in the dormitory remain in a dark and unclean cell block, without beds, in similar conditions to the general population. The mentally ill inmates at TSACC are also just as likely to be unconvicted as their counterparts at SCACC. An officer there specifically identified one inmate who had never been convicted of a crime yet had been incarcerated at the prison for 39 years.

i. SCACC: Homosexual Inmates

Number 1 Block lies in an isolated position at the edge of the institution’s grounds, separated from the other cell blocks by a grassy area in front of the medical centre. This isolation is no coincidence, for Number 1 Block is used to hold the most vulnerable – and the most stigmatised – of the prisoners at SCACC: those labeled homosexual, and the mentally ill.

Many of the inmates housed on the east side of the block are not necessarily practicing homosexuals. Correctional officers stated that many are merely suspected to be homosexual, either by other inmates or by the prison authorities. Some may be merely shy, effete, vulnerable – or just different. Many have been shunned or attacked in the general population, and as a result removed to the section for their own protection. The Overseer described the section as something of a refuge.

²² Inverted commas are used here to reflect the fact that many of the inmates housed on the block may not actually be practising homosexuals, as explained below.

However, removing these inmates and isolating them from the general population in order to protect them is something of a double-edged sword. For once he is placed there, an inmate is permanently stigmatised, and unable to participate in the normal daily life of the institution. The prisoners on the homosexual block do not leave the compound unless for a specific reason, and only if escorted by an officer, for fear they may be attacked.

The isolation of suspected homosexual inmates, which also takes place at Tower Street Adult Correctional Centre, apparently has its origins in the Jamaican prison riots of August 1997. During the week of 18th August 1997, 14 prisoners at TSACC died and 40 were seriously injured in one of the most serious prison riots in Jamaican history. The cause of the riot was an announcement by the Commissioner of Corrections, Lt Colonel John Prescod, that condoms would be issued to officers and inmates in Jamaican prisons in an attempt to control the spread of sexually transmitted diseases. Almost immediately after the announcement was made, prison officers went on strike, offended at what they saw as the inference that there might be sexual relations between male warders and prisoners. The diminished staff at TSACC were overcome by the inmates, and prisoners suspected to be homosexuals became targets of violence. The Jamaican Defence Force and Jamaican Constabulary Force had to be called in to help quell the mayhem. In the aftermath of the incident, all known and suspected homosexuals were removed to an isolated part of the prison.²³

The incident is illustrative of the deep-rooted homophobia that runs throughout Jamaican society. Consensual male sexual intercourse remains illegal in the country, and human rights groups regularly document acts of violence and sometimes homicides against gay men.

ii. SCACC: The Mentally Ill Block

During the early 2000s several high profile legal cases concerning ‘*unfit to plead*’ inmates who had become ‘*lost*’ or forgotten in the Jamaican prison system – sometimes for decades – drew attention to the plight of mentally ill inmates on the island. The cases received widespread media attention, and in 2006 the Criminal Justice (Administration) Act was amended to reform the procedures and safeguards for the treatment of mentally ill persons in the Jamaican criminal justice system.

However, in practice, the fact remains that, while the 2006 Amendments did establish new review requirements, and widen the range of orders available to a court faced with a mentally ill defendant to include ‘*admission to a psychiatric facility at the court’s pleasure*’, ‘*treatment and supervision orders*’ and ‘*guardianship orders*’, due to the lack of psychiatric and care facilities in Jamaica, many of these persons will still find themselves incarcerated

²³ See *Report of the Board of Enquiry into Disturbances at the Tower Street Adult Correctional Centre and the St Catherine Adult Correctional Centre between 20th -23rd August 1997*, Jamaica: Ministry of National Security and Justice, March 1998.

in one of the island's high security penal institutions. Since the closure of the forensic wing of the Bellevue Mental Hospital in Kingston in the 1970s, there has been simply nowhere else for these detainees to go.

The National Progress Report 2004-6 on Jamaica's Social Policy Goals included as one of its 'medium term goals' to 'Establish psychiatric wards in prisons to ensure that all inmates in need of medication and treatment have access to appropriate services.'²⁴ However, this goal fails to recognise that many of the mentally ill 'inmates' incarcerated at SCACC or TSACC have never been convicted of a crime, but were sent there for what can only euphemistically be described as 'psychiatric care', before ever standing trial. Once there, it is no exaggeration to say that, unless their condition improves or arrangements can be made for their care in residential facilities, they may never leave. Many never receive visits and have no access to legal representation. On touring the institutions, one is constantly aware of the wholly inappropriate environment they find themselves in. It is also of note that none of the provisions of the Correctional Institution Rules covers the provision of psychiatry at correctional centres.

Conditions

At the time of the visit – according to the muster board – there were 131 unfit to plead detainees being held at SCACC. A few of the most vulnerable of these detainees are removed to the dormitory at the medical centre for round the clock treatment. The remainder are housed in Number 1 block.

The inmates on the mentally ill section wear bright blue jumpsuits, identifying and stigmatising them (the general prison population wear their own clothes, in breach of the Prison Rules, because of a lack of resources at the Department of Correctional Services). During the times when they are not locked down in their cells, the inmates are allowed to walk freely round the bare compound, which faces the medical centre and can be easily seen from the Superintendent's office and administrative buildings of the prison. Upon visiting the prison regularly, one becomes accustomed to the sight of the inmates standing at the fence rambling or shouting incoherently at the other inmates, or simply staring into space. On seeing someone approach the section's fenced compound for the first time prisoners crowd at the fence inquisitively, some suspicious, some just interested in a new visitor. An extra correctional officer was commissioned as an escort for my visit to ensure safety while on the section. On entering the section the first thing that hits you is the smell. The inmates, unable to care for themselves, and suffering from the same lack of facilities as the rest of the population, lack in personal hygiene and foul odours fill the block. Inmates are generally medicated twice a day. Some orally, some by injection. All apparently have a monthly review of their treatment. No prison psychiatrist was present, but the inmates apparently receive two psychiatric visits a week. Interestingly however,

²⁴ See p. 394, *National Progress Report 2004-2006 on Jamaica's Social Policy Goals*, March 2008, Jasper Technical Working Group with Nicole A. Brown, Jamaica Social Policy Evaluation.

on a timetable for medical visits for a previous week left on the wall in one of the reception offices, there were no scheduled psychiatrists' visits. Even assuming that there are twice weekly visits, the fact that a single psychiatrist visiting twice a week was the only qualified practitioner available for 131 mentally ill prisoners gives an impression of the standard of treatment that the detainees receive.

An orderly without mental health problems serving a life sentence lives on the first floor section of the block and assists and helps care for the mentally ill inmates. He acted as a guide during the visit and displayed genuine concern for the inmates, asking if there was anything that could be done to improve their conditions or treatment. While he spoke, an argument broke out down the corridor where one inmate had lost his mattress and was accusing another of stealing it. The argument threatened to turn violent as more mentally ill prisoners crowded round, drawn by the excitement. I had to be escorted to the lower floor of the block while the orderly attempted to retrieve the man's mattress and restore calm.

The inmates' cells are identical to those on the homosexual block and similar to those throughout the institution. However, while the cells of prisoners in the general population at SCACC may contain a modicum of belongings and bedding, and are often decorated with impromptu graffiti or magazine pictures, the mentally ill inmates lack the comforts other prisoners are able to buy or are provided by their families. The majority of their cells were entirely bare.

A few of the inmates possessed sponge mattresses on the floors of their cells; some had cardboard on which they lay. But these and their slop buckets were often the only objects to be seen. None of the cells had working electricity inside. Up to three inmates share a cell, and spend hours in near total darkness.

In the last cell, towards the end of the first floor section, two old mentally ill inmates lay prone on a bare stone floor in an entirely bare cell at right angles to each other, their eyes barely registering my presence. Once my eyes had adjusted to the darkness, I saw that they were surrounded by rotting food, which was covered in flies. Their slop bucket was the only item in the cell, and stood in the corner. The heat and the stench in the cell was overwhelming, and it was difficult to stand inside for any length of time without wretching. It was a truly shocking and horrific scene, even when viewed in the context of general Jamaican penal conditions, and the most egregious thing I saw on the island. Perhaps unsurprisingly, given the history of the building, it more resembled a dungeon than a psychiatric institution.

4. Medical Care

As observed in the introduction to this report, it was difficult, given the short nature of the visits, to gain any in-depth insight into the provision of medical treatment at the institutions. In particular, it was not possible to speak to any of the actual medical officers (qualified doctors) at the institutions because, perhaps tellingly, none were present at the time of the visits. Instead I was shown around the facilities and spoke to correctional officers working in the infirmaries about the standard of medical care they were able to provide. In some cases the correctional officers in the infirmary themselves raised issues regarding lack of resources, which meant that they were unable to provide the standard of care they would have liked to the inmates. The most notable problems raised during the visits were:

- The most significant issue confronting both centres, according to the staff themselves, was that due to a lack of personnel, inmates were regularly missing important external appointments with medical specialists at hospitals and other facilities. An escort of three correctional officers was required in order to take each inmate off the institution grounds, and it was simply not possible to provide this level of supervision on many occasions. Appointments could take months to rearrange, or in some cases were simply cancelled, despite the fact that the need to see a specialist doctor outside the institution meant that it was often the inmates with the most serious health problems who suffered.
- The Correctional Institution Rules lay out a series of detailed obligations as regards the work of medical officers in the prisons, including the requirement that *‘The medical officer shall attend the adult correctional centre once each day, and in cases of sickness or accident, at such other times as the Superintendent may require’*.²⁵ Staff stated that there was daily attendance by a doctor at SCACC, although it should be noted that there was no medical officer present during the visit. Staff at TSACC said that a doctor normally attends five days a week, but that at the time I visited that had been reduced to three due to a lack of resources, and each visit was for only two hours. However, attendance timetables for medical staff on the walls of the medical centres at both institutions indicated that attendance by doctors was perhaps less frequent than was being let on, and the responses given to questions by the staff in the infirmaries at both prisons contrasted somewhat with the regular complaints by prisoners that they were not receiving appropriate treatment for their conditions.

²⁵ Rule 25.

- Both prisons only received visits from psychiatrists on two days a week. This is clearly insufficient given the number of prisoners suffering from mental illness in the Jamaican penal system (see the section above on mental health).
- There was a lack of running water at the infirmary in SCACC. According to staff, at night there was no water available at all. The bathrooms were unclean and there were toilets and baths that were unusable. Staff stated that cleaning materials and new washing facilities were needed.
- Staff said that in some serious cases they had had to purchase medication themselves for the prisoners, as the DCS was not able to pay for the correct treatment (unfortunately I was unable to speak to the Commissioner of Corrections concerning this issue).
- Although anti-retroviral medication was available, many of the prisoners diagnosed as HIV positive (around three quarters in TSACC) were not compliant with treatment, in large part due to the 'homosexual' stigma associated with the condition. A 2008 study of the HIV positive population in TSACC by sociologists from John Hopkins University observed that the prevalence of HIV amongst the population of the prison was double that found in antenatal clinics in the general Jamaican population, and concluded:

Efforts to increase social support of inmates, safety, access to material resources, and trust in the institution would decrease the "pains of imprisonment" and increase quality of life for inmates. Assurances of medical confidentiality, availability of medical treatment, and inclusion of counselors and staff from the outside may increase inmates' participation in counseling and testing services. The issues of stigma and discrimination for HIV and for inmates in the homosexual section must be addressed in a manner that does not further stigmatize homosexual inmates or alienate heterosexual inmates requiring HIV-related services. Real structural change, beyond the scope of clinical services, requires collaboration among government agencies. Restructuring of the prison environment is necessary and requires material and financial resources from international donor groups.²⁶

²⁶ Andrinopoulos, K. M., Kerrigan, D. and Ellen, J. M., 31st July 2008, 'Understanding the prison social context and implications for HIV testing, treatment and care in Jamaica', Paper presented at the annual meeting of the American Sociological Association Annual Meeting, Sheraton Boston and the Boston Marriott Copley Place, Boston, MA. http://www.allacademic.com/meta/p_mla_apa_research_citation/2/4/2/0/7/p242076_index.html. This work has now been published in two academic articles which discuss the issue of HIV in Jamaican prisons in more depth. The first article analyses the issue from a sociological perspective, the second is a research article concerned with the results of the HIV and sexually transmitted disease programme which was established by the John Hopkins team. See firstly Andrinopoulos, K. M., Figueroa, J. P., Kerrigan, D., and Ellen, J. M., 'Homophobia, stigma and HIV in Jamaican prisons', Culture, Health and Sexuality, 2010, 1 – 14; and secondly Andrinopoulos, K. M., Kerrigan, D., J. P. Figueroa, Reese, R, Gaydos. C. A., Bennett, L., Bloomfield, B., Maru, C., and Ellen, J. M., 'Establishment of an HIV/sexually transmitted disease programme and prevalence of infection among incarcerated men in Jamaica', International Journal of STD & AIDS 2010; 21: 114 – 119.

5. Rehabilitation/Vocational Schemes

Ostensibly at least, the Jamaican penal system places great emphasis on rehabilitation. The Corrections Act changed the names of the island's penal institutions so that each carries the uniform suffix 'Correctional Centre', and the 'Correctional Institution' Rules were introduced in 1991. The Department of Correctional Services' own mission and vision statements highlight the importance of the 'rehabilitation', 'empowerment', and 'reintegration' of offenders into society. The Department's description of the 'Correctional Process' is as:

One which provides to those in our care a relevant, structured, therapeutic environment to facilitate their empowerment and rehabilitation to become peaceful, responsible and productive members of society.²⁷

The Department's mission statement also refers to the need to 'contribute to the safety and protection of our society by keeping offenders secure', but the general emphasis remains firmly on rehabilitation.

The aim of rehabilitation, of course, can only be hindered by the standards and conditions described elsewhere in this report, and the general impression gained from visits to SCACC and TSACC is one of a penal system struggling to provide its inmates with the most basic living standards. The rehabilitative and vocational schemes and courses offered at the institutions are grossly under-resourced and oversubscribed, and as a result only a relatively small number of prisoners are able to benefit from them. Indeed the lack of resources is such that no prisoners at SCACC or TSACC are currently able to participate in the day release schemes provided for under Section 58 of the Corrections Act. At TSACC, inmates' woodwork lines the corridors outside some of the cell blocks, as there is simply nowhere else for them to work.

However, despite the paucity of available resources, there were many positives to be observed in the work being undertaken with offenders at the institutions. Staff members and inmates alike were justifiably proud of the schemes that were offered, and of their involvement. The inmates who were able to take part emphasised the positive influence that being able to work had had on them while incarcerated, and expressed their hope that the work they had undertaken would assist them in gaining parole and finding employment when released. In the face of great hardship in terms of basic living standards, work and education seemed to provide the inmates with a sense of focus and purpose. The observations in this section of the report thus acknowledge the more

²⁷ See http://www.dcsj.net/dcsj/vision_and_mission.htm

progressive and positive elements of the maximum security end of the Jamaican penal system, whilst recognising that in the prevailing conditions, the successful rehabilitation of any more than a tiny proportion of inmates remains extremely difficult.

Education

A high proportion of Jamaican prisoners are illiterate, and both TSACC and SCACC provide educational classes from basic literacy to the CSEC examinations in English and Mathematics (the Caribbean equivalent of GCSEs). 150 inmates per term are permitted to participate in educational classes at SCACC, and up to 320 at TSACC, on a part time basis. Both institutions possess very small and limited libraries which lack new books.

At both institutions a number of inmates are able to take part in musical activities, with a range of instruments including electric guitars and drum kits available. TSACC possesses a small but professional standard recording studio, which was funded by the Canadian High Commission. TSACC also has a computer lab with internet facilities, and its own internet based radio station. However, the numbers of inmates able to utilise these progressive and positive facilities are very limited. Only around 25 inmates were permitted to use the internet facilities at TSACC, partly due to illiteracy and inability to use the computer systems amongst the general population. As with the rehabilitative programmes at the prisons in general, the schemes were very positive in outlook, but were swimming helplessly against a tide of overcrowding and lack of resources.

Vocational Schemes

There are a limited number of rehabilitative schemes in operation at SCACC and TSACC. What schemes do exist seemed, from what could be gleaned from such short visits, to be very positive. At SCACC 20 inmates work in a tailor shop, largely making and repairing uniforms for the institution staff, and 10 inmates are employed in the workshop. At TSACC these figures are 41 and 16 respectively. The workshop at SCACC was particularly impressive, with a high standard of metal and woodwork being practised. At the time of the visit, furniture and ornaments were being constructed, some to be sold outside the prison to raise funds for correctional services. In addition, around 20 inmates staff the onsite kitchens at both prisons preparing the meals for the entire populations, and SCACC boasts a bakery which prepares the bread for most of the penal facilities on the island.

Many inmates bring professional skills with them when imprisoned, and vocational experience is apparently an aid to being assigned to one of the schemes. A lucky few learn the skills inside. With being assigned to one of the activities comes certain privileges,

chief among them the ability to spend more time outside one's cell and being able to avoid afternoon lockdown. However, the schemes are vastly oversubscribed, as one would imagine, with only around 30 inmates from a population of about 1300 being able to participate.

Relations between prison staff and inmates who were able to work seemed more relaxed than elsewhere in the institutions. Correctional officers in particular seemed proud of the standard of work that was being produced, and at the positive outlook of the prisoners involved. Nearly all the officers lamented a lack of available resources, and their reliance on old and broken machinery. All emphasised that they would welcome the chance to involve more prisoners in the schemes if they could.

Working Parties

Rule 71 of the SMR states that '*All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer*', although the rules also provide the caveat that '*Prison labour must not be of an afflictive nature*'; Rule 71(3) further provides that '*Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.*' The 2006 European Prison Rules echo this emphasis on positive work. The emphasis on meaningful employment and activity in the international standards is in general accordance with the vision and mission statements of the Jamaican Department of Correctional Services.

In fact, the vast majority of inmates in Jamaica's maximum security penal institutions are legally mandated to work while incarcerated. At the time of the visits, 1019 of the 1285 inmates at SCACC, and 1009 of the 1663 inmates at TSACC were serving their sentences at '*hard labour*'. Like so much of the island's penal system, the wording of the sentence provides a reminder of Jamaica's colonial inheritance. The sentence of '*hard labour*' was abolished in England and Wales by the 1948 Criminal Justice Act, yet it remains on the Jamaican statute books well into the 21st century. The sentence can of course be criticised on a number of levels: it is outdated, and potentially inhuman and degrading in its operation. However, it also means that there is a binding legal obligation on Correctional Services to involve prisoners in daily vocational activity.

Section 32 of the Corrections Act states that an inmate shall '*do such work as may be assigned to him by the Superintendent of such centre or as may be prescribed in Correctional Institution Rules*'. Section 33 permits inmates to work outside the institution with the approval of the Commissioner of Corrections. Rule 153(1) of the prison rules states mandatorily:

Every inmate sentenced to imprisonment at hard labour shall, unless excused by the medical officer on medical grounds, be employed on such class of labour specified in rule 154 as the Superintendent may direct.

The classes of labour specified in Rule 154 include *'Trades, domestic or other adult correctional centre duties and hard bodily labour'*, *'Sedentary or less hard bodily labour'*, and *'Light occupation in accordance with directions of the medical officer.'*

At SCACC there were 230 inmates employed to work inside the institution, and only 14 permitted to take part in external working parties. At TSACC 120 inmates were eligible to be on working parties either inside or outside the institution. Of these, dependant on the work available, generally only a small proportion can work at any given time. At SCACC a correctional officer informed me that there had recently been a working party sent from the prison to clear a wooded area for a local Parish Council, but he conceded that this was not a regular occurrence.

OBSERVATION REPORT

By James Robottom

PART THREE:

Horizon Adult
Remand Centre

The Horizon Adult Remand Centre (HARC) was opened in 2002, having cost \$440 million to construct, making it the island's newest and most expensive penal facility. It lies just outside Central Kingston, to the west of the city, on Spanish Town Road, on a barren patch of land adjacent to May Pen Cemetery and opposite the deprived garrison area of Denham Town. Its modern white concrete walls, lined with razor wire, stand in stark contrast to the archaic structures at SCACC and TSACC. Once inside the front gate, one is ushered through a fenced outdoor corridor and over a small internal road into the main facility. Again in contrast to the other major high security facilities on the island, there is a considerable amount of unused space at HARC, both in the grounds of the institution (at the time of the visit there were no inmates exercising in the open air), and inside it.

Despite its name, as a result of overcrowding elsewhere in the island's penal facilities, HARC houses several categories of inmate, including both female and male juvenile remandees, and a proportion of convicted inmates under sentence, in separate sections. However, its population remains predominantly made up of adult male remandees.³⁹ While significant numbers of pre-trial detainees remain incarcerated in local police lockups across the island, HARC now houses the vast majority of Jamaican remandees.⁴⁰

In its short existence, the institution has not been without controversy. Shortly after opening in 2002, there were suggestions in the Jamaican national media that the construction of the institution had been substandard; and after a series of serious violent incidents at HARC in 2002, the Jamaican Government removed operational control of the centre from the Department of Correctional Services, and placed it in the hands of the Jamaica Defence Force ('JDF' – the Jamaican military).⁴¹ Further, the centre has operated at around half of its intended capacity since it opened. Built to hold over 1000 pre-trial detainees, at the time of the visit its actual population was 616. The two most notable features on entering HARC, are the amount of unused space and empty cells, and the incredible deterioration of facilities in the institution in such a short space of time.

³⁹ At the time of the visit to HARC the muster was as follows: 506 male remanded, 29 convicted, 17 safe keeping, 29 male juveniles, seven female juveniles, four special remandees, four appellants.

⁴⁰ Pre-trial detainees make up 15% of Jamaica's entire prison population. This compares with a figure of 15.7% in England and Wales, and places Jamaica 162nd in the world as regards pre-trial detention as a proportion of penal population as a whole. It is also of note that Jamaica has the lowest pre-trial detention rate in the Caribbean. Given the island's crime rate and the pressures on its judicial system, this rate of detention is perhaps surprisingly low. Figures up-to-date as of October 2007, from the International Centre for Prison Studies World Prison Brief, <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/>.

⁴¹ 'Soldiers in Charge – Horizon Remand Centre under Military Control – Superintendent sent on leave – Team to probe prisoner's escape', *Jamaica Gleaner*, 9th July 2002, <http://www.jamaica-gleaner.com/gleaner/20020709/lead/lead1.html>

1. Governing Legislation

As remandees, the majority of the persons held at HARC are not subject to the Correctional Institution Rules. Section 6(3) of the Corrections Act states that:

For the purposes of this Act, a lock-up or remand centre shall not be regarded as an adult correctional centre and the Correctional Institution Rules, unless expressly otherwise provided therein, shall not apply thereto.

Certain sections of the HARC building were deemed to form part of the Horizon *Adult Correctional Centre* under secondary legislation in 2005 in order that they might house convicted inmates.⁴² These parts of the institution *are*, therefore, subject to the rules. Remandees held elsewhere in *correctional centres* in the Jamaican penal system, such as SCACC and TSACC, are also subject to the rules. However, there is no domestic legislation governing the treatment and detention of adult remandees housed in remand centres (which effectively means only HARC). Remandees housed in lockups *are* subject to The Prisons (Lock-ups) Regulations of 1980;⁴³ but the regulations are very basic, extending only to record-keeping obligations upon officers regarding detainees and incidents, and requiring visits to lockups by a police officer of the rank of at least superintendent every 48 hours. They establish no basic standards of treatment or accommodation and are only two pages long. The lack of effective rules governing pre-trial detention in Jamaica is a matter of some concern, as it leaves remandees – despite their unconvicted status – in something of a legal black hole, without procedural and substantive safeguards, and makes their treatment more susceptible to arbitrary administrative decision-making.⁴⁴

Still more confusing is the fact that the subsidiary legislation which deemed certain parts of HARC to be an Adult Correctional Centre in 2005 states that certain communal or shared areas, specifically *‘the surgery, court room, reception areas, visitors’ booths, exercise areas and other administrative support areas’* form part of the Horizon Adult Correctional Centre *‘whilst being used as the said Adult Correctional Centre’*. Thus seemingly an area is to be deemed a correctional centre, and thus subject to the rules, when being used by a member of the sentenced population, but the same area will remain a remand centre when being used by remandees. This is a legislative compromise borne out of the need to house inmates of separate categories in a single institution. It is impossible to retain complete division between the sentenced and unsentenced populations at HARC. Both categories clearly have to use some of these areas simultaneously: there is, for instance, only one surgery in the facility. The provision is objectionable on two levels. Firstly, it casts a legal cloak over the fact that, *de facto*, the two categories of prisoner will inevitably mix, in breach of both domestic legislation and the SMR. Secondly, it is arbitrary, in the

⁴² The Corrections (Horizon Adult Correctional Centre)(Declaration) Order 2005, made under s.6(1) of the Corrections Act 1985.

⁴³ No.126D/1980, September 10 1980, made under the Prisons Act, now taking effect under the Corrections Act.

⁴⁴ The standard practice of keeping remandees in cells of six at HARC would, for instance, be a breach of the Correctional Institution Rules if they were applicable.

sense that when a member of the sentenced population is in a certain area he is protected by the provisions of the Correctional Institution Rules, whereas a remandee in the very same room is not.

2. Military Control

For the most part, the centre has now returned to the control of the DCS, however it was made clear by Correctional Staff and inmates during the visit that the JDF retain complete control of certain blocks of the facility, access to which was not permitted during the visit. The reasons for keeping certain blocks under military control were unclear, as were the identities of the prisoners held there. Some detainees suggested that they had been sent to the '*soldier block*', as they referred to it, in order for information to be gleaned from them, and made serious allegations of abuse and ill treatment at the hands of the '*soldiers*'. There were suggestions that the sections were used to isolate some of the most dangerous and infamous of Jamaican prisoners: those alleged to be major players in organised crime and the drug trade on the island. Whatever the motivations, it is a serious concern that a section of a civilian facility remains under military control. Human rights groups should be given permission to inspect the military sections at HARC and to determine whether inmates therein are being held in accordance with domestic and international human rights law.

3. General Conditions

Cells

The cells at HARC were built to house six inmates each, with three concrete bunks adjoined to each side wall of a cell, one on top of another. The cells are dark, dirty, overcrowded, and incredibly hot. This is how the majority of the remandees at HARC are held, with a lucky few having the good fortune to be placed in a cell with less inhabitants.

Inmates are supposed to be provided with a thin sponge mattress and blankets on their entry to the institution. However, many detainees slept on cardboard laid on their concrete bunk, or simply on the concrete itself. I was informed that, due to a lack of resources, it was often not possible to provide inmates with any bedding at all.

Each cell measures 3.9 metres by 2.88 metres, meaning that standard practice is to allocate each inmate a mere 1.9 metres² each in cell floor space. In fact, there is considerably less space than even this tiny amount, as the bunks on either side wall intrude into

the cell, leaving a central corridor between them not much more than a metre wide. Unsurprisingly, when speaking to detainees during the visits, they would invariably be lying or sitting on their own individual bunk, as there would be barely enough room for each of them to stand in the cell at the same time. It should be remembered that the HARC cells were specifically designed to be this overcrowded.

Each cell in HARC is fitted with a toilet in the rear corner, generally unscreened, behind the inmate's bunks. However, the majority of these had no running water, and required inmates to pour water down them in order to flush. Many were broken altogether, either vandalised, or simply faulty. There are no taps in the cells at HARC, despite it having been built so recently. Detainees are permitted only a limited amount of water each day. As in SCACC and TSACC, the amount depends upon how many drinking vessels they can secure. Using the water to flush the cell toilet therefore lessens the amount of drinking water available to inmates.

None of the cells at HARC have working electricity inside, and the remanded population are generally not permitted to run wires from sockets outside their cells in the same way as the inmates at the correctional centres (some of the sentenced population are afforded this amenity). The cells themselves are unlit, and the only light available comes through the bars at the front of the cells, from halogen bulbs which run down the corridors. There are sockets for halogen bulbs in each of the cells, which were installed when HARC was constructed, but no bulbs, and no electricity. Many of the sockets had been vandalised. We were informed that there had never been working light bulbs in the cells. Further, unlike at SCACC or TSACC, the corridors at HARC are enclosed within the institution complex, and do not lead directly outside, meaning that there is no natural light whatsoever in the cells. The only ventilation comes from the bars at the front of the cell, but again, as this leads onto an enclosed internal corridor, it provides virtually no relief. The cells are thus incredibly hot, and with limited ability to flush a toilet which is shared between six men, the stench is overpowering.

Time out of Cells/Exercise

The inmates are permitted around ten minutes per day outside their cells to bathe, collect water, and do their laundry in the washrooms. Each section at Horizon has an internal washroom at the end of the corridor, fitted with communal, unscreened showers and a sink for laundry. However, many of the showers did not appear to work, paint was falling away from the walls, and in some cases plaster from the walls was coming away. The washrooms were filthy. Just as throughout HARC, when confronted with them it was almost impossible to believe that the building was constructed so recently.

Other than the time allotted to visit the washrooms, the remanded inmates at HARC generally spend 24 hours a day locked down. Exercise periods for the remanded

population are irregular and severely restricted by a lack of staff. Many of the inmates had not been outside in the open air or seen sunlight for over a month.

Food

The most common complaint among the inmates at HARC was regarding the food served by the institution, which we were informed was frequently spoiled and/or inedible. By contrast, the inmates at SCACC and TSACC did not, on the whole, criticise the provision of food at the institutions, choosing to direct their criticisms elsewhere. At HARC, strikingly, the first complaint of an inmate who had been locked down for over a month would invariably be the food he received, given the general living conditions at the institution, this was something of a surprise. Interestingly, the food at HARC is supplied by a private contractor, whereas the kitchens at SCACC and TSACC are run and staffed by Correctional Services employees and the inmates themselves. As remandees, the majority of inmates at HARC are not permitted to work whilst detained; clearly, a kitchen largely run by remandees would have an incentive to provide a higher standard of diet.

This issue is compounded by another frequent complaint at HARC, which is the pricing in the tuck shop. Remandees' families are unable to bring food into HARC, but can purchase tokens that the remandees can then use at the tuck shop. However, we were told on many occasions that the prices for foodstuffs and other items at the tuck shop were up to three times the general market value of the goods.

There is an urgent need for a review of the provision of food at HARC including the pricing of goods in the tuck shop.

Juvenile Remandees

There were 29 male juvenile remandees at HARC at the time of the visit, housed in a separate section on the ground floor of a remand block. For the most part, the juveniles are held in identical conditions to the adult detainees, although there is a small hall in front of their cells where a communal television plays constantly. We were informed that the juvenile remandees spend the majority of their day locked down, although their regime was more flexible than the adult remandees. It was not clear how often the juveniles were permitted to exercise outdoors. The conditions were shocking for a juvenile detention centre, with little more than a television to keep the detainees occupied and no meaningful activity provided for them.

HARC is also used to house a limited number of female juvenile detainees, in a separate block at the rear of the institution. Apparently, the female juveniles were being housed

in the same section as female adults (who are held at HARC for safekeeping prior to deportation, having overstayed their visas). This raises clear issues as regards the separation of different categories of detainees. Rule 29 of the *United Nations Rules for Juveniles Deprived of Their Liberty* requires that ‘*in all detention facilities juveniles should be separated from adults...*’ We were also informed that until recently the female juvenile detainees had been locked down permanently, but that a policy announcement by the Commissioner of Corrections had led to them being allowed more time out of their cells. Female juvenile detention policy was the subject of much media concern during the time the visits were carried out, due to the ongoing inquiry into the fire at the Armadale Juvenile Correctional Centre – which resulted in the deaths of several girls.

The detention of juveniles – both male and female – in adult detention centres raises significant human rights and welfare concerns. These concerns are only compounded by the wide discretion afforded to the Jamaican judiciary as regards juvenile detention. Juveniles may be detained if they are in need of care and protection, if deemed uncontrollable, or if in conflict with the law.⁴⁵

Sentenced Population

There were also 29 convicted prisoners held at HARC at the time of the visit. As observed above, these inmates are, according to subsidiary legislation, legally held in the Horizon Adult Correctional Centre. In reality, the sentenced inmates sections are in the same block of the building as the remandees, albeit divided by different corridors.

The inmates are held in cells identical to those of the remanded population, but with fewer men per cell. Some had cells to themselves, some shared with one or two others. The sentenced inmates at Horizon were mainly serving life sentences. Amongst their number were some former escapees, and some convicted of notorious crimes, suggesting, as elsewhere in HARC, that the institution is used by Correctional Services as something of a ‘*holding house*’ for inmates they wish to remove from the general prison population.

An effort seems to be made to provide the sentenced inmates with a similar regime to that they would receive in a full adult correctional centre. In contrast to the remand population, they are therefore allowed out of their cells in the mornings and afternoons between breakfast and lunch and lunch and dinner, for around one or two hours. They are not, however, permitted outside any more than their remanded counterparts. Those that we spoke to had not been in the open air for over three weeks. The inmates only move freely along the length of the corridors of their sections and in and out of their cells.

⁴⁵ See further p.49 below, on the Commission of Enquiry into the tragedy at the Armadale Juvenile Detention Centre on 22nd May 2009.

Safekeeping

We came across a number of detainees in HARC who had overstayed their visas or were illegally in Jamaica, and had been removed to the remand centre for ‘safekeeping’. Adult females were housed with the juvenile female population, and males were placed in cells with remandees. In one male remand cell, the Jamaican detainees urged us strongly to seek legal assistance for a man of South Asian origin who spoke no English and whose country had no consular presence on the island. Had this man not found himself housed with such benevolent cell mates, he could have been very vulnerable indeed to abuse. It was unclear how long this category of persons faced being incarcerated. Some had already been at HARC for several weeks, if not months, and several complained that they had not been allowed proper consular access.

Under subsection 15(4) of the Aliens Act of 1946, persons in respect of whom a deportation order has been made⁴⁶ can be detained in such a manner as the Minister of National Security may direct. However, the practice of detaining for breach of immigration law in a remand centre such as HARC, with all the requisite suffering that entails, raises serious questions of compatibility with human rights law, as well as prison standards. Again it is urged that a review take place of the practice of ‘safekeeping’ and that such detainees should be housed in a facility altogether more suitable to their needs and legal status. At the very least they should be separated from the general Jamaican remand and juvenile prison populations.

Conclusion

No statistics are available on the average time spent on remand in Jamaica. However, we came across several detainees who had been awaiting trial for several years. One informed us that he had been detained on a murder charge for over five years. This astonishing length of time must be set in context of the terrible conditions suffered by the inhabitants of HARC. To spend five years awaiting trial, locked down 24 hours a day with five other men in a dark, dirty, and incredibly hot cell, with a broken toilet and no running water is wholly intolerable in any criminal justice system. The detainees of HARC are being denied their most basic human rights. The dilapidated state of the building is quite incredible, given that it was only opened in 2002. The structure is in urgent need of refurbishment, with the lack of electricity and ventilation, and the state of the bathrooms all being of particular concern.

Indeed, if the conditions at HARC were to be improved, it might be that the facility could be further used to alleviate the pressure on the wider penal system. The reasons for

⁴⁶ Or in respect of whom a certificate is given by a court with a view to the making of a deportation order.

the low population at HARC are unclear, it may be that the institution is understaffed, or that the poor construction of the building means it cannot hold its full quota. Or it may be that the need to transport remandees to courts around the island and a lack of transport vehicles make it impractical to incarcerate more remandees at HARC. A further possibility is that the relatively low rate of pre-trial detention in Jamaica simply dictates that the institution is not filled to capacity.

Whatever the reason, one is struck immediately upon entering HARC by the number of empty cells (at the time of the visit only around half the cells were in use) and amount of space available, especially in comparison with the reported conditions in lockups around the island,⁴⁷ and the acutely overcrowded SCACC and TSACC. Given that the Corrections Act has already been utilised to specify that certain sections of HARC are to be used as an adult correctional centre (as opposed to a remand centre),⁴⁸ and that the institution now houses a good number of sentenced inmates, it is surprising that the free cell space has not been used to house greater numbers of both sentenced and remanded men, thus alleviating the overcrowding elsewhere in the island's penal system.⁴⁹

⁴⁷ See the report of the United Nations Special Rapporteur, n.32 above, pp.10-11 and appendix.

⁴⁸ See the Corrections (Horizon Adult Correctional Centre)(Declaration) Order 2005, made under s.6(1) of the Corrections Act 1985.

⁴⁹ See further the report of the United Nations Special Rapporteur, n.32 above, pp.11-12 and appendix. The report raises concerns about the conditions of detention at HARC in general. It also documents a serious disturbance at the centre on 8th February 2010, as a result of which 60 detainees were injured and 35 were taken to hospital. The report concludes that the medical evidence regarding the injuries to detainees strongly corroborated detainees' allegations that they had been subject to ill-treatment (including the use of *'blunt force with a series of blows to the body'*) at the hands of correctional officers, and that *'severe pain was intentionally inflicted for the purpose of punishment, amounting to torture'* (p.12).

OBSERVATION REPORT

By James Robottom

PART FOUR:
Conclusions

It is submitted that, as regards domestic law, the egregious conditions of detention suffered by the inmates at SCACC, TSACC and HARC breach the prohibition on inhuman and degrading treatment in Section 17 of the Jamaican Constitution, and certain specified provisions of the Corrections Act, and the Correctional Institution (Adult Correctional Centre) Rules 1991. As regards international obligations, the current conditions are clearly in breach of Articles 7 and 10 of the ICCPR, Article 5 of the ACHR, and many specific provisions of the SMR. The individual breaches are detailed in the ‘*specific complaints*’ in part 5 of the report. This conclusion is informed and contextualized by a growing body of international jurisprudence (in which the SMR has played an increasingly important interpretative role) where prison conditions have been found to breach the prohibition on inhuman and degrading treatment.³⁹

It is important, however, not just to make legal observations, but also to ask why Jamaican inmates and detainees face such a situation, and what can be done to improve their day to day existence. This is so not least because if the prevailing conditions remain, the threat of unrest and violence will continue to hang constantly above the heads of Jamaican prisoners and correctional staff alike. In this regard, it is worth recalling the words of the Woolf Inquiry into the Strangeways riots in the UK, which led to widespread reforms of the English penal system.

A large proportion of the prisoners in Strangeways prison were sympathetic to the instigators of the disturbance and antagonistic towards the prison service because of the conditions in which they were housed. Those conditions were, as far as the vast majority of inmates were concerned, regarded as being wholly unacceptable and inhumane. As the inmates repeatedly told the inquiry, if they were treated like animals, they would behave like animals. The prison was overcrowded and the inmates were provided with insufficient activities and association. The inmates were spending too long in their cells without sanitation and without the opportunity at reasonable frequency to bathe and change their clothes, including their underwear.

These words were quoted by Vivien Stern at a conference entitled ‘*Improving Prison Conditions in the Caribbean*’ as long ago as 1991.⁴⁰ Reading the description of the conditions at SCACC given at that conference, it is clear that very little has changed over the past 20 years. The terrible conditions in Jamaican prisons have remained, and as a result the lives of many Jamaican inmates and correctional staff have been lost in avoidable incidents in the interim. Reports and enquiries have an important role to play in bringing the state of the Jamaican penal system to wider public attention. However, they can only go so far in the absence of genuine political and financial commitment to reform. Shortly after this report was completed, the report of the Commission of Enquiry into the incident on 22nd May 2009 at the Armadale Juvenile Detention

³⁹ See for instance *Peers v Greece* (2001) 33 EHRR 1192, *Kalashnikov v Russia* (2003) 34 EHRR 36, and in the UK *Napier v Scottish Ministers* [2005] 1 SC 229.

⁴⁰ *Improving Prison Conditions in the Caribbean: Report and Papers from a Conference*, Caribbean Rights & Penal Reform International, December 1991.

Centre, which resulted in the deaths of seven young female remandees, was made public. The report was damning of the standard of treatment received by the girls at the centre and the events which led to the fire. It made detailed recommendations for the Jamaican juvenile detention system. In addressing Parliament on the report in March 2010, Prime Minister Bruce Golding stated that resource constraints and the heavy burden placed on officers working in such facilities ‘cannot explain or excuse negligence or inertia’. He also observed that the Department of Correctional Services should no longer control and run juvenile detention facilities, outlining plans to amend legislation in order to place juvenile remand and correctional facilities under the remit of the Child Development Agency.⁴¹

It is hoped that the Armadale report will result in an overhaul of the juvenile detention regime in Jamaica, and provoke debate on the conditions in the penal system as a whole. However, if past experience is any guide, there will be little substantive improvement of the lot of the island’s detainees and inmates. As long ago as 1991 a Jamaican task force on Correctional Services observed that:

*The policy in colonial days, which has been scrupulously adhered to since independence, was to have a commission of enquiry at regular intervals but not to pay much heed to their major recommendations as inevitably the cost of implementing these recommendations would have been considerable.*⁴²

In fact the Department of Correctional Services *does* recognise the need for an improvement in correctional centre standards. Following the disturbances at SCACC in 2000, the Government announced plans to construct a modern high security facility on the island to relieve the pressure upon SCACC and TSACC.⁴³ At a meeting with the author of this report in August 2009, the Commissioner of Corrections confirmed that these plans for a ‘super prison’ still exist, but stated they had been shelved indefinitely due to a lack of funding.

The knowledge of the need for reform at a senior level within the Department is reflected at ground level in the correctional centres. During the visits, many correctional officers lamented the lack of available resources. They complained of low wage rates (particularly in comparison with Jamaican police officers), but also of the negative effect that overcrowding and a lack of constructive activity have upon the wellbeing of staff and inmates alike. Officers stated that they were forced to work with old and faulty equipment, and made pleas for their particular areas, such as the storeroom or

⁴¹ See Statement to Parliament by the Hon. Bruce Golding, Prime Minister, on the Report of the Armadale Enquiry, 2nd March 2010, http://www.opm.gov.jm/news_and_public_affairs/statement_by_the_prime_minister_report_of_the_armadale_enquiry_tuesday_march.
⁴² For further analysis on this issue, see the observations of Manfred Nowak in *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, United Nations General Assembly, 11 October 2010, p.8, http://ap.ohchr.org/documents/dpage_e.aspx?m=103

⁴³ *Ibid*, p.28.

⁴⁴ See Knight, K. D., Minister of National Security and Justice, Letter to the Jamaica Gleaner, ‘Knight Clarifies Prison Plans’, 22nd May 2001, <http://www.jamaica-gleaner.com/gleaner/20010522/letters/letters1.html>.

the barbershop – often even quoting the brand names of equipment they specifically required. Several officers voiced their concerns that the global economic crisis and Jamaica’s ongoing funding problems with the International Monetary Fund would only serve to make life harder in the correctional centres. There is clearly no lack of desire for reform from those who have to live and work within the harsh realities of the system.

While in the short term, there are measures that could undoubtedly be taken by the Department of Correctional Services to improve matters (for instance, overcrowding in the sentenced population could be eased by utilising the whole blocks of cells that stand empty at HARC, as argued above), in the long term, incidents such as the fire which claimed the lives of seven girls at Armadale in 2009 will only be avoided through significant financial investment, greater staff numbers, and the construction of modern penal facilities.⁴⁴ Whether the funding for such reform comes from international or domestic sources – and it should never be forgotten that thousands of Jamaican prisoners languish in buildings which were built and used by the British to house their enslaved ancestors – the argument that, as a developing nation, Jamaica has pressing social needs, which are more deserving of assistance than the living conditions of convicted criminals, should not hold sway. As the UN Human Rights Committee stated in *Mukong v Cameroon*⁴⁵:

As to the conditions of detention in general, the committee observes that certain minimum standards regarding the conditions of detention must be observed regardless of a State party’s level of development. These include, in accordance with rules 10, 12, 17, 19 and 20 of the Standard Minimum Rules for the Treatment of Prisoners, minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of a separate bed and provision of food of nutritional value adequate for health and strength. It should be noted that these are minimum requirements which the Committee considers should always be observed, even if economic or budgetary considerations make compliance with these obligations difficult.

In fact, as this report was being completed, on 5th February 2010, after months of negotiations, the IMF granted a \$1.27 billion US dollar loan to Jamaica. The conditions of this loan included a commitment by the Jamaican Government to ‘increase spending on better targeted social programs by 25 percent’.⁴⁶ A proportion of these funds should be committed to the Ministry of National Security to implement the reforms that the Jamaican penal system so desperately requires. Failing such a commitment, and in the absence of further specifically targeted international or Government funding, Jamaican prisoners will continue to exist in inhuman, degrading, and archaic conditions. It was Nelson Mandela, a hero to many Jamaicans, after whom a major road and public park in

⁴⁴With regard to the latter, the lessons of the sub-standard construction of HARC in the early 2000s should be borne in mind.

⁴⁵(1994) UN Doc CCPR/C/51/D/458/1991.

⁴⁶International Monetary Fund Website, 4th February 2010. <http://www.imf.org/external/pubs/ft/survey/so/2010/NEW020410A.htm>

Kingston are named, and whose visit to the country on his release from prison in 1991 provoked nationwide celebrations, who observed that '*no one truly knows a nation until one has seen inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.*'⁴⁷

⁴⁷ N. Mandela, *Long Walk to Freedom*, Little, Brown, London, 1994, p.187.

Contributors

James Robottom is a barrister at 7 Bedford Row. He has particular interests in prison law, sentencing, parole, human rights law and all criminal justice related areas. He is a former visiting tutor in Criminology and Criminal Justice at King's College London. James first visited Jamaica in order to undertake an internship in death row work in 2002. Since then he has returned to work at the Independent Jamaican Council for Human Rights on several occasions, primarily undertaking work relating to conditions of detention on the island.

Alison Macdonald is a human rights barrister based at Matrix Chambers in London. Alison specialises in administrative and public law, civil liberties, public international law, crime and police law. She has particular expertise in public law issues arising out of the criminal justice system, and cases with an international law dimension. She has represented death row prisoners in the Caribbean in the Privy Council, including *R v Earlin White* (2010) (from Belize) which set out guidelines on circumstances in which a discretionary death sentence could be imposed, and *Pitman v The State* (2008) (from Trinidad and Tobago) involving the admissibility of fresh evidence relating to the appellant's mental capacity. Alison regularly lectures on human rights issues, including the right to life and the rights of those in detention, and has participated in the Council of Europe's human rights training for the Turkish prison service. She recently served on a JUSTICE committee on the future of the Parole Board. Alison has co-authored, with Tim Owen QC, *Prison Law*, 4th edition (Oxford University Press, 2008) and was a contributing author to *Blackstone's Guide to the Serious Organised Crime and Police Act 2005* (Oxford University Press, 2005).

Tim Owen QC is a human rights barrister based at Matrix Chambers in London who specialises in administrative and public law, crime, civil liberties, fraud (criminal), police law, confiscation and proceeds of crime. Tim has appeared in more than 40 appeals to the House of Lords/Supreme Court as well as in numerous appeals to the Court of Appeal in both public and criminal law cases, particularly those which raise novel and important human rights issues. He also has extensive experience in miscarriage of justice appeals arising from references by the Criminal Cases Review Commission. Notable cases include *R (James, Lee and Wells) v Sec of State for Justice* (2009) in relation to indeterminate public protection (IPP) sentences; the litigation affected some 4,000 IPP prisoners, and *Stafford v UK* (2002) in the European Court of Human Rights which resulted in the complete judicialisation of the indeterminate sentence in domestic law. Tim Owen is the editor/author of numerous publications including *Blackstone's Criminal Practice 2010* (Oxford University Press, 2010) (Advisory editor); *Prison Law*, 4th edition (Oxford University Press, 2008), in which Alison Macdonald is a co-author; and *Blackstone's Guide to the Serious Organised Crime and Police Act 2005* (Oxford University Press, 2005).

About the Death Penalty Project

For more than 20 years, The Death Penalty Project has worked to promote and protect the human rights of those facing the death penalty. Although the Project operates in all jurisdictions where the death penalty remains an enforceable punishment, its actions are concentrated in those countries which retain the Judicial Committee of the Privy Council in London and in other Commonwealth countries, principally in the Caribbean, Africa and Asia.

The Project's main objectives are to promote the restriction of the death penalty in line with international minimum legal requirements; to uphold and develop human rights standards and the criminal law; to provide free and effective legal representation and assistance for those individuals who are facing the death penalty; and to create increased awareness and encourage greater dialogue with key stakeholders on the death penalty.

The provision of free legal representation to men and women on death row has been critical in identifying and redressing a significant number of miscarriages of justice, promoting minimum fair trial guarantees, and establishing violations of domestic and international human rights.

Some of the Project's landmark cases which have restricted the implementation of the death penalty in the Caribbean include *Pratt & Morgan v the Attorney General of Jamaica* [1994] 2 AC 1, *Lewis v the Attorney General of Jamaica* [2001] 2 AC 50, *Reyes v the Queen* [2002] 2 AC 235, *The Queen v Hughes* [2002] 2 AC 259, *Fox v the Queen* [2002] 2 AC 284 and *Bowe & Davis v the Queen* [2006] 1 WLR 1623. Other landmark cases include *Mutiso v Republic*, judgment of the Court of Appeal at Mombasa, July 2010 (abolition of the mandatory death penalty for murder in Kenya); *Attorney General v Kigula et al.* judgment of the Supreme Court of Uganda, January 2009 (abolition of the mandatory death penalty and delay on death row in Uganda); *Kafantayeni et al. v Attorney General* 46 ILM 564 (2007) (abolition of the mandatory death penalty in Malawi); and *Boyce et al. v Barbados*, 20th November 2007, decision of the Inter-American Court (savings clause, mandatory death penalty and prison conditions found to be in violation of the American Convention on Human Rights).

In the last 20 years, The Death Penalty Project has submitted complaints to the United Nations Human Rights Committee, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights on behalf of prisoners sentenced to death.

Perspective

Baroness Vivien Stern CBE, Prison Expert

My response to first reading this excellent report was a mixture of admiration and profound sadness – admiration for the determination and compassion of the author, James Robottom, and sadness that in the two decades very little seems to have improved in Jamaica's prisons in spite of the best efforts of some dedicated Prison Commissioners and their staff.

I visited Jamaican prisons over 20 years ago, in 1989, under the auspices of the Jamaican Council for Human Rights. Although I have made numerous prison visits since then in all regions of the world the conditions in St Catherine's District Prison have stayed in my memory. I found it hard to believe that human beings could keep their sanity for long living in such overpopulated, dark, filthy cell blocks.

It is certainly deeply disheartening to learn that little has changed, and for the past 20 years many hundreds of human beings have passed through the doors of St Catherine's and the other Jamaican maximum security prisons.

The Death Penalty Project has done a service in producing this report. That Jamaica has not executed anybody for many years is greatly to be welcomed, and all those who have played a part in that outcome are to be congratulated. But the fate of those whose death sentences are commuted must not be forgotten. The prison staff and prisoners in Jamaica deserve better. Let us hope that this report will lead to change at last.