

**Arlene Harrison-Henry (Jamaica) – AHH**

**AHH:** I want to say, as I listened to the various presentations, there are many similarities that exist in your legal system as they exist in ours but also important differences. I wanted to ground my presentation in our Charter of Fundamental Rights and Freedoms which was passed in the Jamaican Parliament in April 2011. The Charter guarantees to everyone on the island certain important rights, some of which were already mentioned by our first presenter, such as the right to life, security of person, presumption of innocence, right to a fair trial within a reasonable time, just to name a few, and the Charter states very clearly that the arrest or detention of an individual is allowed only on reasonable grounds following the procedure established by law.

In our jurisdiction we do not have any legislation that prescribes pre-trial preventive detention. Our constitution does allow detention in circumstances to prevent the spread of a contagious disease, to have someone arrested by virtue of the fact that the person is a drug addict in need of health care, but having said that, it does not mean that we do not have preventive detention; what I'm saying is that we have no law that's says "we need to have preventive detention" nor do we have any hearing for preventive detention.

So what the Charter does is like any other Constitution in a democratic society, it embraces that liberty is a normal state of human existence. It also sets out the only reason known in our law that could allow the detention, arrest or lock-up of an individual, which is that there is reasonable suspicion that the person has committed an offence or is going to commit an offence, and those are the only reasons known in our jurisdiction for anyone to be deprived of liberty.

Now the Constitution offers protection from arbitrary arrests and from detentions done in bad faith and we would therefore say that we do have an adequate legal framework. Despite the existence and state of our laws we do suffer from wide-scale indiscriminate arrests, raids, detentions, searches, processing, and photographing mainly of young men and these mainly take place in low socio-economic communities. Evidence of abuse is found in the very large sums of money that the Government of Jamaica is required to pay annually. Between 2010 and 2011 the Jamaican Government was ordered by the court to pay JA\$ 365,000,000 (USD\$ 3,604,925) mainly for police excesses. Payment to individuals with judgments is slow and painful, as the Government has very little resources to meet the judgments, yet the excesses continue and the debt continues to rise.

While the debt is high it is not totally reflective of the excesses which are experienced by many Jamaicans from the lower social strata of society, mainly young males who are criminalized at an early age and alienated from society. Not every one with a case came forward to pursue a case in court for several factors: sometimes out of fear for the police, others for other varied reasons. The difficulty of bringing action is that legal aid is not offered to persons who have a civil cause of action, not even for a constitutional challenge.

So preventive detention is an expression not used in our jurisdiction, though it is practiced. It is used to intervene in what are called 'hot spots', which are normally socially-deprived communities, affecting the poor and socially oppressed.

I want to share with you some statistics which I looked at before coming here. These statistics are provided by the Jamaican Constabulary Force. The figures show that per week about 2200 persons are in lock-ups across the island lock-ups as distinct from prisons and of that number of 2200 some 2000 are unconvicted and approximately 200 persons are detained. Oftentimes detainees stay in custody for several weeks, in many instances denied of the right to duty counsel and the right to be informed of the reason for their detention.

The statistics show the gross overcrowding at the lock ups. The conditions are horrific, poor sanitary conditions, lighting and ventilation, diet and medical care. The condition of persons in custody awaiting trial denied bail or detained are horrendous and far worse than the conditions of those who have been convicted by a court and serving a sentence.

And while bail is a 'right' in our jurisdiction in respect of crimes other than murder and treason, our high crime rate is so high that our courts are cautious and prefer to err on the side of not granting bail. The Charter speaks to a person accused of a crime to be tried within a reasonable time. This is aspirational as many persons serve a sentence before trial.

Our reality is that the majority of the Jamaican public will support the police and their action even when innocent persons are hurt because of our very high crime rate.