

INTRODUCTORY STATEMENT

by

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**PERMANENT MISSION OF JAMAICA TO THE
OFFICE OF THE UNITED NATIONS AT GENEVA**

to the

**26TH SESSION OF THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF
ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES:**

REVIEW OF JAMAICA

4TH – 5TH APRIL, 2017

Mr. Chairman,

Other Members of the Committee on Migrant Workers,

Ladies and Gentlemen,

As many members of the Committee are aware, Jamaica has a long and distinguished tradition in the promotion of human rights dating back to the 1960s, when, on the cusp of gaining independence from Great Britain, the nation sought to place human rights at the centre of international discourse.

The Government of Jamaica consistently seeks to implement its international human rights obligations while ensuring that the rights of all of its citizens are protected. The

protection of the human rights of all Jamaicans without distinction has been entrenched in the Jamaican Constitution since 1962. This has guided the formulation of domestic labour legislation. In 2011, the protection of these rights was enhanced through the adoption of the Charter of Fundamental Rights and Freedoms which provides a network of rights that reflect the commitment of the Jamaican Government to equality, freedom and justice for all in line with our national commitment and our international obligations.

Jamaica's remarkable progress has been conveyed to various UN treaty bodies including the Human Rights Committee as recently as October 2016.

Given the direct correlation between the promotion and protection of human rights and the pursuit of development, Jamaica continues to accord priority to the latter. The central theme of *Vision 2030 Jamaica* – our National Development Plan, is that Jamaica must become “the place of choice to live, work, raise families and do business”. This statement reflects our commitment to the Sustainable Development Goals, and to the protection of the human rights of our citizens.

Jamaica has a long history of labour migration as a country of origin, transit and destination. Jamaican workers have travelled extensively and worked in countries such as: Cuba, Panama, the United States of America (USA), Canada, the United Kingdom (UK); some of these, since the 1950s. The colonial period was also characterized by a consistent inflow of skilled labour recruited from overseas.

Jamaica currently has an over-supply of domestic labour. The lack of adequate local opportunities influences Jamaicans' choice to emigrate in search of these opportunities.

We are also grappling with a critical shortage of well-needed skills in the healthcare and education sectors, resulting from the emigration of nurses and teachers, in particular, which has impacted the quality of service delivery in these sectors. Recruitment of these workers by overseas interests has intensified in recent years. To address this issue, the Government has adopted policies to bond workers for a specific period of employment; to increase the number of people trained; and to recruit workers from overseas.

Legislative Framework

The legislative framework which forms the basis of Jamaica's labour migration policies include nine (9) main statutes:

- The Foreign Nationals and Commonwealth Citizens (Employment) Act 1964
- The Caribbean Community (Free Movement of Skilled Persons) Act 1997
- The Employment Agencies Regulation Act 1957
- The Foreign Recruiting Act 1875
- The Recruiting of Workers Act 1940
- The Immigration Restriction (Commonwealth Citizens) Act, 1945
- The Deportation (Commonwealth Citizens) Act, 1942
- The Aliens Act, 1946 and
- The Trafficking in Person (Prevention, Suppression and Punishment) Act, 2007

Jamaica is also a signatory to a number of treaties and conventions which enshrine guiding principles on migration and human rights. These include:

- UN International Convention on the Protection of All Migrant Workers and Members of their Families, 1990
- UN International Covenant on Economic , Social and Cultural Rights, 1966
- ILO Convention No. 97 on Migration for Employment (Revised) 1947

Agencies Involved in the Governance of Migration

Six Ministries and Agencies of Government, collectively, have primary responsibility for migration matters. They are: Ministry of National Security (MNS), Ministry of Justice (MOJ), Ministry of Labour and Social Security (MLSS), Ministry of Foreign Affairs and Foreign Trade (MFAFT), Passport, Immigration and Citizenship Agency (PICA) and the Jamaica Constabulary Force (JCF).

The role of the Ministry of National Security is to protect and ensure the safety of Jamaica's borders while implementing and operationalizing policies to protect against internal threats. The Jamaica Constabulary Force (JCF), a Department of the Ministry of National Security, is the lead agency with responsibility for enforcing the Trafficking in Persons legislation supported by other Government agencies.

The Passport, Immigration and Citizenship Agency (PICA) plays a major role in border control and provides services to include: issuing passports, and granting permanent residence and citizen status. This agency also works closely with the Ministry of Labour and Social Security in relation to the issuing of work permits and exemptions. PICA also liaises with the JCF and the Ministry of Foreign Affairs and Foreign Trade.

The Ministry of Justice provides legal advice to all Government agencies and ensures the protection of the human rights of all persons living and working in the country.

The MLSS is mandated to protect the rights of Jamaican workers both locally and overseas. It is responsible for providing guidance to workers and employers in respect of the labour legislation and code. The MLSS processes foreign workers that are being recruited to meet the needs of the local labour market primarily by issuing the necessary work permits and exemptions consistent with national policy and legislation.

The MLSS also manages the circular migration of Jamaican workers for temporary employment under the Government's Overseas Employment Programme. In addition, it licenses, regulates and monitors the operation of private employment agencies which recruit workers for short term employment both locally and overseas.

The Ministry of Foreign Affairs and Foreign Trade (MFAFT) assists in border control by providing information to those who are desirous of entering the country. The Ministry of Foreign Affairs and Foreign Trade promotes and safeguards the interest of Jamaica and Jamaicans overseas. The MFAFT offers general consular support to Jamaican nationals including on issues specifically affecting migrant workers, through the Ministry's consular network of Embassies, High Commissions, Consulates General and Honorary Consuls.

The MLSS and the MFAFT jointly manage a Liaison Service – an extensive, consular-like service with offices in Canada and the USA, which provides welfare and protective services to Jamaican workers on the Government's Overseas Employment Programme.

The Service's comprehensive duties include: monitoring the employment situation to ensure that both employers and workers adhere to the terms, conditions and procedures established under the employment contract and where there is nonconformity, provide the necessary guidance to address same. Liaison officers also secure proper housing for workers and ensure that they have adequate healthcare and workmen's compensation in the event of work-related illness or injuries.

The Overseas Employment Programme

The temporary migration of Jamaican workers on short-term labour contracts has long been a feature of Jamaica's history. The Overseas Employment Programme has contributed to Jamaica's social and economic development for more than sixty 60 years. The programme has helped to absorb surplus labour and alleviate high unemployment, particularly, in rural areas. It has assisted in providing a stable source of income to support thousands of families, assisting people to acquire housing, quality education, healthcare and other basic amenities. Jamaica has benefitted significantly from the inflow of remittances over the years. In addition to helping to stabilize our foreign exchange market, Jamaica has recorded higher savings, increased macroeconomic stability, higher levels of productivity through technological transfer, entrepreneurship and reduction in poverty and social inequality. Labour migration has also benefitted destination countries, through increased cultural understanding and positive influence on labour and immigration policies.

The four programmes administered by the Jamaican Government are:

- The United States (US) Farm Work Programme
- The United States Hospitality (Hotel Workers) Programme
- The Canadian Seasonal Agricultural Workers Programme
- The Canadian Low Skills Programme

The United States Farm Work Programme began in 1943 in response to the shortage of agricultural labour in the USA during World War II. The US programmes are operated under the **US Immigration and Naturalisation Act of 1952** and require certification by the US Department of Labor (USDOL). The USDOL determines whether or not there is a shortage of agricultural or hospitality workers before granting approval for Jamaican workers to enter the country. The agricultural and hospitality programmes allow for the temporary admission of foreign workers to the USA to perform work of a seasonal or temporary nature provided US workers are not available. Jamaican agricultural workers are employed in States such as Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York and Washington State – e.g. on apple, tobacco and citrus farms. Hotel workers are primarily employed in Florida, Michigan, and South Carolina - as housekeepers, front desk personnel, waiters, chefs, maintenance workers and landscapers.

The Canadian Seasonal Agricultural Workers Programme (SAWP) began in 1966 shortly after the signing of a bilateral agreement between the governments of Jamaica and Canada. The operation of the SAWP is guided by an MOU which was re-signed in 1995. It began as a pilot scheme in Ontario but has expanded to other provinces such as: Manitoba, New Brunswick, Nova Scotia, Quebec, and Vancouver. The Canadian

Low Skills Programme includes other unskilled workers who travel to Canada but are not covered under the seasonal programme. These are employed in hospitality, fast food, laundry, janitorial services, fishing and construction. In 2014/2015, 14,104 Jamaican workers benefitted from employment under the Overseas Employment Programme. That figure grew to 14,844 in 2015/2016.

Recruitment of Foreign Nationals

Jamaica's overall policy for persons wishing to enter the country as migrant workers is to provide an enabling and facilitative environment. **The Immigration Restriction (Commonwealth Citizens) Act 1945, the Deportation (Commonwealth Citizens) Act 1942 and the Aliens Act 1946** establish the conditions under which persons are admitted or deported from Jamaica.

Commonwealth and other foreign nationals who wish to engage in employment activities in Jamaica must obtain a work permit or work permit exemption before entering Jamaica, whether or not the nature of such employment is voluntary, commercial, business professional, charitable, entertainment or sports.

The **Foreign National and Commonwealth Citizens Act, 1964** is the legislation under which work permits are issued by the Jamaican Government to foreign nationals. It seeks to ensure that the Jamaican economy is supplied with the labour and skills necessary for growth and development whilst protecting the jobs of Jamaicans. Under this Act and its Regulations, prospective employers are required to:

- Prove that they are unable to obtain suitable skills locally and
- Ensure that locals understudy expatriates to facilitate transfer of knowledge

During 2014/2015, the Government issued 4,210 work permits and 935 work permit exemptions. In 2015/2016, we issued 4,545 work permits and 894 exemptions.

In 2014/2015, 3,122 of the permits issued went to professionals, senior officials and technicians. The majority of the work permits issued in 2015/2016 (3,806), were also approved for these categories of workers. In 2014/2015, 2,575 of the work permits issued were to persons originating from Asia, mainly Chinese nationals contracted to work in Jamaica on infrastructural projects. In 2015/2016, the largest number of work permits (1,810) were issued to workers Latin America.

The Jamaican Government has always facilitated the free movement of its citizens overseas, the activities of foreign recruiting agents are monitored under the **Foreign Recruiting Act (1875)**. This Act empowers the Minister to prohibit or limit recruiting activities for the employment of Jamaican workers in any other State.

The Ministry of Labour and Social Security administers the **Employment Agencies Regulation Act (1957)** which provides for the monitoring of employment agencies to ensure that job seekers are not exploited. The Ministry is charged with the responsibility of issuing the requisite licence to the eligible agencies and monitoring their activities to ensure compliance. While many of these employment agencies play a vital role in the achievement of higher levels of employment and act in compliance with the law, there are others who take advantage of vulnerable job seekers.

The Ministry of Labour and Social Security conducts inspections of records maintained by licensed agencies as well as investigates complaints against them. The Ministry, with the assistance of the Police, continues to close down illegal operations wherever they are found throughout Jamaica. Support is also provided to the Police in taking action against violators.

CARICOM NATIONALS

Jamaica participates in the Caribbean regional integration movement, CARICOM, established in 1973 by the Treaty of Chaguaramas. The CARICOM Single Market and Economy (CSME) is intended to benefit the people of the Region by strengthening the economies of the member countries through sharing of a single regional economic space. Central to this is the free movement of goods, capital and people. CARICOM nationals who qualify under the **Caribbean Community (Free Movement of Skilled Persons) Act, 1997** are exempt from work permits. These workers can move freely to another Member State and enjoy the same benefits and rights as the citizens of that Member State. However these workers do not have the right to citizenship or permanent residence.

The CSME also allows CARICOM nationals with specific skills to apply for and acquire a Certificate of Recognition of CARICOM Skills Qualification. In 2014/2015, Jamaica issued 432 such certificates. Of these, 405 were issued to Jamaicans, 11 to nationals from Trinidad and Tobago, and 8 to Guyanese nationals. In 2015/2016, the Government issued 455 such certificates; 423 to Jamaicans, 10 to Guyanese and 8 to Barbadian nationals.

Initiatives have been undertaken across the Region to effect the provisions established under the CSME. These include:

- the amendment and enactment of legislation to modify the need for a work permit and to remove the visa requirements to facilitate ease of entry and indefinite stay.
- the establishment of an umbrella training body, Caribbean Association of National Training Agencies,
- issuance of common certification (Caribbean Vocational Qualification) and of a CARICOM passport and skill certificate.

The relevant legislation has been enacted in all CARICOM countries and is at various stages of implementation in these countries. This provision is fully operational in Jamaica and allows CARICOM nationals from the following ten categories of wage earners to move and work freely in the Community:

- Graduates of all recognized universities in the World
- Artists
- Musicians
- Sports persons
- Media workers
- Nurses and Teachers and other professional workers
- Artisans
- Managers, Supervisory and technical staff
- Household Domestic Workers

- Holders of Associate Degrees or comparable qualification

The Recruiting Workers Act (1940) deals with emigrants going to countries other than those declared under the **Emigrants Protection Act**. It protects workers who are recruited in Jamaica for employment both at home and overseas, by stipulating the obligations of the recruiters including the provisions for repatriation of recruits when necessary.

Social Security

Under the **Caribbean Community (Free Movement of Skilled Persons) Act, 1997** provisions are made for the harmonisation and transfer of social security benefits for eligible persons. The CARICOM Social Security Reciprocal Agreements were also established with Canada and the United Kingdom. The Agreement allows for pension contributions to be aggregated and the benefits dispensed to individuals irrespective of nationality. The Ministry of Labour and Social Security is charged with the responsibility of coordinating activities to ensure that the objectives of the Reciprocal Agreements are achieved.

Participants in the Seasonal Agricultural Workers Programme in Canada make weekly contributions to the National Insurance Scheme (NIS), through salary deductions. A similar arrangement was in place for the seasonal agricultural workers who travel to the USA, but was discontinued in 2010. Efforts are presently being made to reinstate this arrangement.

Family Services

The families of workers participating in the short-term overseas employment programmes are assisted through the Ministry of Labour of Social Security. These families do not accompany their relatives overseas. Social workers conduct routine visits to families of migrant workers to assess their living conditions and to provide support and appropriate interventions where necessary. These include:

- Offering counselling, guidance and information that will empower persons in the family to manage their income thereby improving their standard of living.
- Ensuring that children in the household are attending school and are receiving financial, medical and emotional support in the home environment.
- Making referrals to social and economic support programmes.

Human Trafficking

Jamaica is a signatory to several human rights instruments concerned with the prevention of trafficking in persons, protecting citizens and punishing offenders where convictions occur. Jamaica also observes the Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of Children in Armed Conflict and the Optional Protocol to the (CRC) on the Sale of Children, Child Prostitution and Child Pornography. Jamaica ratified the Palermo protocol on August 26, 2011 and passed and updated anti-trafficking legislation, including the **Trafficking in Persons (Prevention Suppression and Punishment) Act**.

As a signal of its commitment to eliminating human trafficking a National Task Force Against Trafficking in Persons (NATFATIP) was established. The task force has

responsibility for the coordination of the anti-trafficking programmes aimed at prevention, protection and prosecution. NATFATIP is also working closely with other agencies on the preparation of a national strategic plan, a curriculum for high schools and policy development. NATFATIP consists of representatives from the following agencies; the Ministry of National Security, the Bureau of Women's Affairs, the Ministry of Justice, the Ministry of Foreign Affairs and Foreign Trade, the Planning Institute of Jamaica, the Cabinet Office, the Ministry of Health, the Attorney General's Chambers, the Child Development Agency, the Office of the Director of Public Prosecutions and the Organised Crime Division of the Jamaica Constabulary Force.

This concludes our formal introductory statement. We look forward to engaging with the Committee in the next few hours on Jamaica's progress in implementing the Convention.

I thank you.