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Jamaica: Mandate of Tivoli Commission of Enquiry must be strengthened

Although the long-awaited appointment of a Commission of Enquiry into the events surrounding the 2010 state of emergency is to be welcomed, its mandate falls short of what is needed to obtain truth, justice and reparation for the victims, said Amnesty International today.

“Victims have waited nearly four years for this Commission, but regrettably the Terms of Reference that establish its mandate are seriously flawed and could prejudice the effectiveness of the enquiry,” said Chiara Liguori, Amnesty International’s researcher on the Caribbean.

A Commission of Enquiry was appointed on 24 February by the Jamaican government and consists of a three person panel formed of jurists from Jamaica, Barbados and Saint Kitts and Nevis.

A State of Public Emergency was declared in the parishes of Kingston and St Andrew on 23 May 2010 following resistance by armed supporters of Christopher “Dudus” Coke to government efforts to take him into custody. The US authorities were seeking Coke’s extradition to the USA where he faced drug-trafficking and firearms charges. Within two days, at least 77 people, including one member of the security forces, were killed in Tivoli Gardens in West Kingston, scene of much of the violence. Forty-four are alleged to have been the victims of extrajudicial execution by the security forces. At least 54 others, more than half of them members of the security forces, were injured during these police operations.

“Given the history of impunity in Jamaica for human rights violations by security forces and the history of commissions of enquiry which have failed to deliver justice for the victims, it is essential that the scope of the Commission of Enquiry be strengthened. Otherwise this will be a missed opportunity,” said Chiara Liguori.

When the Jamaican government invited comments on the draft Terms of Reference for the Commission of Enquiry in June 2013, human rights organizations including Amnesty International recommended a number of changes aimed at strengthening the Commission’s mandate.

The only positive change has been that the Commission is now mandated to enquire into chain of command responsibilities during the security force operation in Tivoli in order to ascertain whether there was any dereliction of duty or unlawful conduct. However, there remain a number of serious flaws.

Firstly, there is a clear lack of balance in how the Terms of Reference are framed. While the ToR specifically mandate the Commission to enquire into alleged attacks by the community on the security forces, they contain only a generalised reference to “whether the rights or any person or persons were violated [...] by either law enforcement officers or by anyone else”. The ToR contain no specific reference to inquiring into the concrete and specific allegations of serious human rights violations carried out by the security forces, which include extrajudicial executions and other unlawful killings, enforced disappearances, and arbitrary arrests and detention. Such violations have been widely reported, including by the interim report of the Office of the Public Defender published in May 2013. Amnesty International believes that this imbalance could give an appearance of suggesting a predetermined outcome.

The Commission of Enquiry is not a substitute for, but should act as a complement to an independent, impartial and properly resourced criminal justice process. As such, the Terms of Reference should specify the need for the Commission to refer matters to the relevant prosecutorial bodies should it obtain information indicating that identified individuals may have been responsible for committing, ordering, encouraging or permitting human rights abuses, or complicity in such abuse. Such

information should be passed to these bodies for investigation with a view to prosecution of the persons allegedly responsible in fair trials without recourse to the death penalty.

The Terms of Reference are also not framed in a way that will require the Commission to assess the operations carried out by security forces against international human rights law, including specific international standards on the use of force and firearms. The ToR only mentions that the Commission will enquire into “the conduct of operations by the security forces”. Crucial aspects that would enable the conduct of the security forces to be assessed against international human rights law (such as planning, training, equipping and oversight of the security forces concerned) are not specified.

The enquiry should not be confined to looking at each case or incident in isolation but should examine the underlying reasons and contributory factors to the events which are the subject of the enquiry, including a critical analysis of law enforcement structures, policies, doctrines and practices. The Terms of Reference are also not specific enough on the nature of the recommendations that the Commission should produce. In particular, there is no mandate for the Commission to formulate recommendations on how the security forces should operate in future, or on reparation for victims.

Finally, all aspects of the work of a commission of enquiry should be made public. So far as possible, the media and public should be given access to the proceedings and to the evidence on which the commission bases its findings. While in this case the Terms of Reference state that the Commission is to report to the Governor General, Amnesty International underlines that the report should be made public without undue delay.

“Unless the above considerations are explicitly mentioned in the Terms of Reference, victims and their families must rely on the goodwill of the Commissioners to ensure that they are implemented so that this enquiry is as effective as possible and that they can finally obtain truth, justice and reparations” added Chiara Liguori.

Background information

Investigations into the 2010 State of Emergency have been beset by constant delays. The Office of Public Defender - a commission of the Jamaican Parliament which is mandated to protect and enforce the rights of citizens - was tasked with producing a report on the events just after they occurred. However, an interim report was only made public on 29 April 2013. Amnesty International believes that the Jamaican government should have provided the Office of the Public Defender with the necessary resources in order for it to complete its report in a more timely manner. Despite several calls from the Public Defender, Jamaican civil society and Amnesty International since shortly after the incidents, the ruling government at the time of the events, as well as the current one that took power in January 2012, refused to appoint a commission of enquiry until the Public Defender’s report had been released. The Government finally announced the decision to establish a commission of enquiry shortly after the publication of the interim report of the Office of the Public Defender.

The Jamaican government published draft Terms of Reference for the Commission of Enquiry in June 2013 and invited comments from civil society and general public. Amnesty International wrote to the government with its comments.

The interim report of the Office of the Public Defender recorded 76 civilian deaths, of which 44 are alleged to be instances of extra-judicial executions. One soldier was also killed. It also pointed to four possible victims of enforced disappearance and allegations of hundreds of arbitrary detentions – among the approximately 1,000 people detained towards the beginning of the state of emergency.