



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the fourth periodic report of Jamaica\*

1. The Committee considered the fourth periodic report of Jamaica (CCPR/C/JAM/4) at its 3310th and 3312nd meetings (see CCPR/C/SR.3310 and 3312), held on 18 and 19 October 2016. At its 3330th meeting, held on 1 November 2016, it adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Jamaica and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/JAM/Q/4/Add.1) to the list of issues (CCPR/C/JAM/Q/4), which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

- (a) The enactment of the Law Reform (Flogging and Whipping) (Abolition) Act of 2013;
- (b) The enactment of the Disabilities Act of 2014;
- (c) The appointment of the National Rapporteur on Trafficking in Persons, in 2015.

4. The Committee also welcomes the State party's accession to the 1961 Convention on the Reduction of Statelessness, on 9 January 2013.

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\* Adopted by the Committee at its 118th session (17 October-4 November 2016).



## C. Principal matters of concern and recommendations

### National human rights institution

5. The Committee is concerned that the State party has not yet established a consolidated national institution with broad competence in the field of human rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex) despite multiple commitments to do so (art. 2).

**6. The State party should establish a national human rights institution with a broad human rights mandate in line with the Paris Principles and provide it with adequate financial and human resources to ensure its functioning. The State party should undertake an inclusive consultation process on the model, mandate and functions of a national human rights institution, including with human rights organizations and the broader public.**

### National mechanism for reporting and follow-up

7. While noting the establishment of the Interministerial Committee for reporting and follow-up under the Ministry of Foreign Affairs and Foreign Trade, which has become the de facto standing mechanism for all human rights treaty reporting and follow-up, the Committee notes that the mechanism is not sufficiently institutionalized in the operations of the Government of the State party (art. 2).

**8. The State party should consider establishing by executive directive or other mandatory means a permanent governmental mechanism with a clear mandate to coordinate the engagement of the Government with human rights mechanisms and to follow-up on their recommendations in consultation with civil society.**

### Application of the Covenant

9. The Committee is concerned by the explanation given by the State party that the provisions of the Covenant cannot be directly invoked before domestic courts and that some provisions of the Covenant, including prohibition of discrimination, are not adequately protected under domestic law (art. 2).

**10. The State party should strengthen its legal framework to protect all rights enshrined in the Covenant and take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before national courts.**

### Optional Protocol

11. The Committee reiterates its regret that the State party does not intend to re-accede to the Optional Protocol that provides the Committee with the competence to examine individual communications on alleged violations of the Covenant by States parties to the Protocol (art. 2).

**12. The State party should consider re-acceding to the Optional Protocol to the Covenant that provides for an individual communication procedure, with a view to ensuring the rights of individuals to an effective remedy.**

### Persons with disabilities

13. While welcoming the enactment of the Disabilities Act of 2014 and the measures taken by the State party to promote inclusion of persons with disabilities, the Committee

expresses its concern that persons with disabilities continue to face challenges, including access to public buildings and services (arts. 2 and 26).

**14. The State party should effectively implement its law on disabilities in order to ensure non-discrimination, promote inclusion of persons with disabilities and ensure access to effective remedies in case of violation of their rights.**

#### **Prohibition of discrimination**

15. The Committee is concerned that the Charter of Fundamental Rights and Freedoms does not protect all persons against all forms of discrimination and contains saving clauses that are contrary to the provisions of the Covenant. It regrets that the right to freedom from discrimination is based only on the grounds of “being male or female” and fails to prohibit discrimination on other grounds, such as sexual orientation, gender identity, marital status, disability and health status. The Committee reiterates its concern (see CCPR/C/JAM/CO/3, para. 8) that the State party continues to retain provisions under the Offences against the Person Act that criminalizes consensual same-sex relationships, thus promoting discrimination against homosexuals (arts. 2, 3, 17 and 26).

**16. The State party should amend its laws and enact comprehensive anti-discrimination legislation to prohibit all forms of discrimination. It should also decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation into compliance with the Covenant and put an end to prejudices and the social stigmatization of homosexuality. Saving clauses in the Charter of Fundamental Rights and Freedoms relating to the Offences against the Person Act and Sexual Offences Act should be removed where they obstruct the amendment of legislation that enhances the rights of women or any other group.**

#### **Attacks against lesbian, gay, bisexual and transgender persons**

17. Despite some positive developments, such as the adoption of the Diversity Policy by the Jamaica Constabulary Force, in 2011, and a reported increase in the level of tolerance within Jamaican society, the Committee notes with concern reports of incidents of discrimination, harassment and violent attacks against lesbian, gay, bisexual and transgender persons and the alleged failure of the State party to prevent and investigate such attacks (arts. 2, 6 and 26).

**18. The State party should ensure that cases of violence against lesbian, gay, bisexual and transgender persons are thoroughly investigated, that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims have access to effective remedies. The State party should conduct a national campaign to disseminate information about human rights and promote respect for diversity and the rights of all persons, especially lesbian, gay, bisexual and transgender persons.**

#### **People living with HIV/AIDS**

19. The Committee is concerned at the persistence of discrimination and stigmatization of people living with HIV/AIDS and the high proportion of girls aged 15 to 19 years infected with the virus. While welcoming the adoption of the National Integrated Strategic Plan for Sexual Health and HIV (2014-2019) and the National Workplace Policy on HIV/AIDS, the Committee is concerned with the lack of an enabling legislative framework to ensure their effective implementation (arts. 2 and 26).

**20. The State party should amend its legislation to include protection against discrimination based on health status and to ensure better protection of people living with HIV/AIDS, including vulnerable segments of the population, such as lesbian, gay,**

bisexual and transgender persons, and women and girls who have contracted HIV, especially as a result of sexual violence. The State party should intensify its work with stakeholders and allocate adequate financial and human resources to implement the National Workplace Policy on HIV/AIDS and to ensure the adequate functioning of the National HIV-related Discrimination Reporting and Redress System. It should also continue its awareness-raising efforts to combat stigmatization and discrimination of people living with HIV/AIDS.

#### **Gender roles and women in decision-making positions**

21. While commending the increased participation of women in decision-making positions and the State party's efforts in this regard, the Committee regrets that women still remain underrepresented in the top decision-making positions. The Committee is further concerned about persisting gender inequality, including in relation to participation in economic life, and stereotypical attitudes with regard to roles of men and women in the public and private spheres (arts. 2, 3 and 26).

22. **The State party should strengthen its efforts, including through public gender sensitization campaigns, to promote gender equality and female participation in decision-making positions in public and political life. The State party should consider adopting measures to facilitate balance in parenting and childcare, so as to allow women to seek and occupy higher decision-making positions. In addition, the State party should take appropriate temporary special measures necessary to increase the number of women in decision-making positions in public and political life.**

#### **Violence against women, including domestic violence**

23. The Committee is concerned that legislation provides women and girls with only limited protection against violence, including domestic violence. It notes with concern that the Sexual Offences Act (2009) reflects a narrow understanding of rape and protects against marital rape only in certain circumstances, the Domestic Violence Act (2004) does not cover sexual abuse and the draft Sexual Harassment Bill does not include sexual harassment in public spaces. The Committee regrets the lack of shelters for victims of domestic violence (art. 7).

24. **The State party should amend the Sexual Offences Act and the Domestic Violence Act to increase protection for women and girls and men and boys against sexual violence. It should also enact legislation to protect against sexual harassment, including in public spaces. Furthermore, the State party should expedite its efforts to provide adequate shelters for victims of gender-based violence, including domestic violence.**

#### **Voluntary termination of pregnancy**

25. The Committee is concerned at the high levels of maternal mortality resulting from unsafe abortions and the lack of official data on the number of clandestine abortions and their linkage to high maternal mortality. It reiterates its concern at the general criminalization of abortion in the Offences against the Person Act (see CCPR/C/JAMCO/3, para. 14), including in cases of pregnancies resulting from rape, incest and fatal fetal abnormality. The Committee is also concerned about the lack of access by girls below the age of 16 years to sexual and reproductive health information and services without parental consent, especially in the light of the high incidence of adolescent pregnancy and incest in the State party (arts. 3, 6, 7 and 17).

26. **The State party should, as a matter of priority, amend its abortion legislation to help women address unplanned pregnancies and not resort to illegal abortions that**

could put their lives at risk. It should take measures to protect women against the health risks associated with unsafe abortions by improving its monitoring and data collection on women's access to health care and by enabling access to sexual and reproductive health information and services to all women, including girls under the age of 16.

#### **State of emergency, extrajudicial killings and investigations**

27. While noting the 2016 report of the West Kingston Commission of Inquiry into the circumstances surrounding the state of emergency of May 2010 related to incidents in West Kingston/Tivoli Gardens and the decision of the Government to offer an apology and provide compensation to aggrieved persons, the Committee is concerned that the State party's legislation on states of emergency does not meet the standards of article 4 of the Covenant (arts. 2, 4 and 6).

**28. The State party should fully implement the recommendations contained in the report of the West Kingston Commission of Inquiry, including providing victims with a remedy, strengthening accountability for the use of force and dismantling garrisons. It should also review its laws on states of emergency and bring them into line with the provisions of article 4 of the Covenant.**

29. The Committee remains concerned at the continued lack of clarity of the mandate and powers of the Independent Commission of Investigations and its interplay with the Office of the Director of Public Prosecutions with regard to the conduct of investigations and prosecutions (arts. 2, 6 and 7).

**30. The State party should clarify the mandate and role of the Independent Commission of Investigations to ensure effective and independent investigation of law enforcement personnel and to avoid conflicts of mandate with other organs of the State party.**

#### **Prohibition of torture and cruel, inhuman or degrading treatment or punishment and the right to life**

31. The Committee remains concerned about the deplorable conditions in the State party's prisons and detention facilities, including overcrowding, poor sanitary conditions and lack of medical care. It is also concerned about the lack of a clear statutory framework governing the treatment of persons in pretrial detention and failure to hold accused persons separately from convicted persons (arts. 7 and 10).

**32. The State party should expedite its efforts to reduce overcrowding in places of detention, including by resorting to alternatives to imprisonment, and improve conditions of detention, particularly with regard to sanitary conditions and access to medical care, in accordance with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules) (General Assembly resolution 70/175, annex). The State party should adopt legislation governing pretrial detention and put in place a system to detain accused persons separately from convicted persons.**

33. The Committee remains concerned that the State party's criminal legislation does not adequately ensure that acts of torture as stated in article 7 of the Covenant are fully criminalized. It is also concerned at reports of torture and ill-treatment or excessive use of force by the police or security forces during arrests, in police stations, during interrogation and in detention facilities. It is further concerned that there is no independent complaints authority to deal with such complaints (art.7).

34. **The State party should:**

(a) **Amend its criminal law to ensure that all acts of torture as stated in article 7 of the Covenant and in internationally established norms are prohibited and sanctioned with penalties commensurate with the gravity of the crimes;**

(b) **Guarantee that allegations of torture and cruel, inhuman or degrading treatment are investigated by an independent authority, that the perpetrators of such acts are prosecuted and, if convicted, punished with penalties commensurate with the gravity of the crime, and that the victims receive adequate compensation;**

(c) **Improve the training of law enforcement personnel in this regard to ensure that anyone who is arrested or detained is informed of his or her rights;**

(d) **Provide in its next periodic report detailed information on complaints filed for such violations, the number of individuals prosecuted and convicted, and the reparation awarded to victims.**

35. While noting the de facto moratorium on executions since 1988, the Committee notes with regret that the State party does not intend to abolish the death penalty. Moreover, it notes with concern that the conditions on death row remain inhuman (arts. 6 and 7).

36. **The State party should consider abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. It should ensure that the death-row regime does not amount to cruel, inhuman or degrading treatment or punishment.**

**Protection against trafficking in persons**

37. The Committee welcomes the adoption of the National Plan of Action to Combat Trafficking in Persons (2015-2018) and the appointment of the National Rapporteur on Trafficking in Persons, in 2015. It is concerned, however, that the ability of the National Rapporteur to execute its functions may be hampered by inadequate resources. It is also concerned that national legislation does not adequately prevent the return of victims of human trafficking to a country where there are substantial grounds for believing that they would be at a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant (arts. 6 and 7).

38. **The State party should continue its efforts with regard to training and capacity-building of professionals providing support to victims of trafficking. It should allocate adequate human and financial resources to the Office of the National Rapporteur on Trafficking in Persons and ensure that victims of human trafficking enjoy the rights provided for under the Covenant and are not returned to a country where there are substantial grounds for believing that they would be at a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant.**

**Refugees and asylum seekers**

39. The Committee is concerned about the lack of legislation on the protection of asylum seekers and refugees. It is further concerned that refugees are not provided with identification cards and that unaccompanied minors are formally excluded from access to refugee status determination in the State party (arts. 2, 6, 7 and 24).

40. **The State party should enact legislation on the protection of the rights of refugees and asylum seekers, provide refugees with identification cards and facilitate access to asylum procedures for such persons in order to protect them from being returned to a country where there are substantial grounds for believing that they**

would be at a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant.

#### **Right to an effective remedy and fair trial**

41. The Committee remains concerned at the delays in the dispensation of justice and the limited availability of legal aid (arts. 2 and 14).

42. **The State party should pursue the reform of its justice system to ensure speedy and fair trials, including providing adequate budgetary allocations and human resources and strengthening its legal aid capacity for any case in which the interests of justice so require.**

#### **Rights of the child**

43. The Committee welcomes the efforts of the State party to review the Child Care and Protection Act, including the removal of the possibility of incarcerating a child on the basis of him or her being “beyond parental control”, and provision of psychological and mental health services to children and their families by the Child Development Agency and Department of Correctional Services. Despite the fact that the number of correctional orders has significantly decreased, the Committee is concerned about reports that there are still children serving such orders. It is also concerned that minors are held in police lock-ups on a regular basis, often for more than 24 hours (arts. 9, 10 and 24).

44. **The State party should amend its law in a timely manner in order to remove the possibility of incarcerating a child on the basis of him or her being “beyond parental control” and to address gaps in: service delivery to children in conflict with the law, the coordination and oversight of the child protection sector, support to families and rehabilitation of children who experienced exploitation, abuse and other trauma. The State party should detain children only as a last resort and for the shortest possible period provided by law; continue establishing child-friendly holding cells; and provide alternative arrangements to detention, in line with the Covenant. It should continue to provide children in conflict with law with alternative support, including psychological and rehabilitation services and conflict resolution programmes.**

#### **Corporal punishment**

45. The Committee is concerned that corporal punishment remains lawful in the home and in schools, and that it continues to be practised in the State party and is widely accepted in society (arts. 7 and 24).

46. **The State party should take practical steps, including legislative measures, where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns to raise awareness about the harmful effects of such punishment.**

#### **Freedom of expression and human rights defenders**

47. The Committee is concerned about reports of obstacles in implementation of Access to Information Act (2004), such as low level of knowledge of information officers and inaccessible complaint procedure. It is also concerned about reports from some human rights NGOs facing obstacles in registration under the Charity Act. It is further concerned about the reports of incitement to threat, harassment and attacks against human rights defenders (arts. 2, 19, 21 and 22, 26).

48. The State party should take measures to enhance full implementation of its law on access to information, including training of officers, conducting public information campaigns and establishing an accessible complaint mechanism. In accordance with the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, the State party should further ensure that consideration and granting of charitable status to non-governmental organizations is done on a non-discriminatory basis and does not obstruct or delimit the work of human rights defenders as acknowledged in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144, annex). The State party should take all measures necessary to protect the rights of human rights defenders to freedom of expression, association and peaceful assembly.

#### **D. Dissemination and follow-up**

49. The State party should widely disseminate the Covenant, its fourth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public.

50. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 26 (voluntary termination of pregnancy), 32 (prohibition of torture and other cruel, inhuman or degrading treatment or punishment) and 44 (rights of the child) above.

51. The Committee requests the State party to submit its next periodic report by 4 November 2021 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country, as well as minority and marginalized groups. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 4 November 2017, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's replies to that list will constitute its next periodic report to be submitted under article 40 of the Covenant.

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