



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### 118th session

#### Summary record of the 3310th meeting (Chamber B)

Held at the Palais Wilson, Geneva, on Tuesday, 18 October 2016, at 3 p.m.

*Chair:* Mr. Ben Achour (Vice-Chair)

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*In the absence of Mr. Salvioli, Mr. Ben Achour, Vice-Chair, took the Chair.*

*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Fourth periodic report of Jamaica (CCPR/C/JAM/4; CCPR/C/JAM/Q/4 and Add.1)*

1. *At the invitation of the Chair, the delegation of Jamaica took places at the Committee table.*
2. **Mr. McCook** (Jamaica), introducing his country's periodic report (CCPR/C/JAM/4), said that one of the defining principles on which Jamaica had been built was its commitment to human rights. In 2011, protection for the rights of all Jamaicans had been enhanced through the adoption of the Charter of Fundamental Rights and Freedoms. In addition, one of the four major goals of Vision 2030 Jamaica — National Development Plan was the promotion of a secure, cohesive and just society. Since the presentation of the previous periodic report, Jamaica had ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and had enacted the Disabilities Act.
3. Public investment in all spheres of life, including human rights protection, was constrained by inadequate resources and limited fiscal space. Moreover, as a middle-income country, Jamaica had limited success in attracting grants or concessionary loans. Despite those constraints, it was committed to maintaining and strengthening human rights mechanisms.
4. The Cabinet had already approved the establishment of a national human rights institution in accordance with the Paris Principles. The institution would follow a hybrid model, essentially expanding the scope of the existing Office of the Public Defender. His Government had successfully implemented a series of measures to reduce serious crime and thus protect the right to life and security of person.
5. A number of initiatives had been taken to reform the justice system, including legislative initiatives to enhance the speed, efficiency and fairness of trials and of the justice system as a whole. Case backlog had been reduced by resolving conflicts at the community level, thereby diverting cases from the formal justice system, and by removing certain marijuana offences from the remit of the court.
6. The National Policy for Gender Equality had been finalized in 2011, and in a 2015 study by the International Labour Organization Jamaica had ranked highest in the world in the proportion of women managers. The Minister of Culture, Gender, Entertainment and Sport had announced legislated quotas to address the underrepresentation of women in politics. Women accounted for 58.9 per cent of workers in the public sector and held a number of senior positions, including those of Chief Justice and Director of Public Prosecutions. His Government remained concerned about the academic underperformance of boys and men, who made up only 20 to 30 per cent of students in tertiary education.
7. Dealing with gender-based violence required a multifaceted approach, and public education was required for sustainable results. His Government had taken a number of steps to provide a policy framework for addressing the issue, including the adoption of the National Strategic Action Plan to Eliminate Gender-Based Violence in Jamaica. The Government had also put in place measures to encourage male victims of domestic violence to report their abuse. It had committed to establishing a minimum of three regional emergency shelters within the next three years.

8. The National Commission of Inquiry set up to investigate the events that had taken place in West Kingston in May 2010 had completed its work, and its recommendations were currently being considered by an ad hoc subcommittee of the Cabinet. The Prime Minister was expected to issue an apology to the people of West Kingston in the coming weeks, and a compensation committee would also be established. The number of unlawful police killings continued to decrease, thanks in part to improved human rights training and to the work of the Independent Commission of Investigations.
9. His Government was reviewing the Child Care and Protection Act to address some of the challenges in the protection of children's rights. It was expected that the forthcoming amendments would remove the possibility of a child being incarcerated for being beyond parental control and would also deal with the use of corporal punishment by the general public. The Ministry of Education was taking administrative measures to ensure that the use of corporal punishment was discontinued in all schools.
10. Meaningful improvements had been made with regard to conditions for children in detention. The number of children in correctional or remand facilities had been reduced by more than 40 per cent since 2012, largely by cutting down on the number of correctional orders issued by the courts to children in conflict with the law. The Office of the Children's Advocate continued to train members of the judiciary on its Child Justice Guidelines. The Child Interaction Policy and Procedure had been developed by the police force with a view to improving police interaction with children.
11. From April 2015 to March 2016, 30 cases of trafficking in persons had been investigated. The Trafficking in Persons (Prevention, Suppression and Punishment) Act had been amended in 2013 to widen the scope of the offence of trafficking to include offences akin to trafficking, to define debt bondage and to provide additional recourses for victims. A national rapporteur on human trafficking had been appointed in March 2015.
12. His Government disagreed with the view that the absence of a single anti-discrimination law in the country impeded efforts to address discrimination. Jamaica had a panoply of laws, policies, strategies and measures in place to provide redress from discrimination of any kind. Procedures by which citizens could seek redress included the Industrial Disputes Tribunal, the Police Public Complaints Authority and the Office of the Public Defender.
13. The Ministry of Foreign Affairs and Foreign Trade was the executive secretariat for the inter-agency committee that coordinated the Government's response to international human rights treaty bodies. That mechanism was robust and effective.
14. Although consensual sex between adult males was prohibited by law, there was no legal discrimination in Jamaica on the ground of sexual orientation. The law did not criminalize lesbian, gay, bisexual, transgender or intersex (LGBTI) status, nor did it condone discrimination or violence against LGBTI persons. There had been no credible complaints of arbitrary detention or harassment by the police of LGBTI persons, and the Government was not aware of any mob-related killings of members of that group.
15. While torture was not defined as a separate offence in national criminal legislation, the Constitution explicitly prohibited "acts amounting to torture". Victims of torture, whether committed by State agents or private individuals, could seek constitutional redress. In 2012, Jamaica had abolished flogging and whipping.
16. His Government had accepted liability for the fire that had broken out in the Armadale Juvenile Correctional Centre in 2009, and it had begun processing payments for all the former wards housed in the dormitory that had caught fire. The Government had also consented to six judgments being entered on behalf of former wards who had suffered psychological trauma.

17. An ongoing national campaign titled “Right to Know ... Power to Change” was being led by the Access to Information Unit. The Unit engaged in public education and outreach, provided training to public authorities, and liaised with civil society organizations. There had been no police reports of any threats, harassment or attacks against human rights activists or defenders. The latter openly and actively engaged in advocacy work and contributed positively to the human rights architecture.

18. Over the past three years, 33 persons had been granted refugee status, and at least 10 had been either resettled in a third country or returned home voluntarily. While recognizing the challenges posed by capacity constraints, the Jamaican Government would not falter in its commitment to ensuring that the human rights of all Jamaicans were protected. His Government attached high importance to support from bilateral and multilateral partners and looked forward to a constructive dialogue with the Committee.

19. **Ms. Waterval**, noting that Jamaica had been an early leader in recognizing the importance of national human rights institutions to ensure human rights implementation and oversight, she said that she wished to know the expected time frame for the effective establishment of a national human rights institution in Jamaica.

20. It would be interesting to learn whether the inter-agency human rights committee was permanent. While the Committee welcomed the improvements in the treatment of LGBTI persons through the implementation of the Jamaica Constabulary Force diversity policy, it was concerned by reports of police officers harassing members of that population, and by statistics showing that large numbers of people did not report homophobic abuse or assaults because they felt that the police would take no action or would respond in a homophobic manner.

21. She would like to know whether the National Policy for Gender Equality had been evaluated, how many judges and government ministers were women, what measures the State party intended to take to remedy gender inequalities, and when special measures would be implemented in that regard. It would be useful to learn whether the National Workplace Policy on HIV and AIDS had been implemented and, if so, what its impact had been. The delegation should indicate when the Government intended to take a decision on the recommendations of the initial report submitted by the Abortion Policy Review Advisory Group in 2007. It should furthermore provide details on the circumstances under which abortion was permitted in the State party, the cost of the procedure and payment options in the event that a pregnant woman seeking an abortion was uninsured. Lastly, the Committee would welcome additional information on the impact of the Programme for the Reduction of Maternal and Child Mortality.

22. **Mr. Iwasawa** said that, since the provisions of the Covenant did not have the force of law in the State party, he wished to know whether the Covenant could be invoked before the courts, and whether the Views of the Committee could be taken into account in interpreting domestic legislation. He invited the delegation to provide an update on the implementation of human rights training programmes for judges, lawyers and prosecutors, and on the impact of that training on the way in which the domestic courts gave effect to the Covenant in their considerations and judgments. The Committee would welcome an explanation of how the rights enshrined in the Covenant were fully guaranteed in domestic legislation. What were the obstacles preventing the State party from re-acceding to the Optional Protocol to the Covenant?

23. He wished to know whether the Government planned to take measures, such as the construction of new facilities, to address the problems of overcrowding, unsanitary conditions and lack of access to medical services in places of detention. The delegation should also explain why sentencing guidelines on alternatives to imprisonment had not

been made publicly available to all legal practitioners. Did the Government plan to introduce a statutory framework on the treatment of persons being held in pretrial detention?

24. **Mr. Fathalla** said that he wished to know when the Jamaica Council for Persons with Disabilities would be established and begin its operations. The Committee would appreciate information on the status of the two codes of practice on persons with disabilities; on the establishment of the Disabilities Rights Tribunal and the Mini Media Campaign on the Disabilities Act which had been planned for October 2016; and on the activities of the Inter-Ministerial Partnership for the provision of learning technologies to children with disabilities. The delegation should provide details of the results of the two surveys on persons with disabilities conducted as part of the Technical Cooperation Project between the Inter-American Development Bank and the Government of Jamaica. It should also describe the progress made regarding the accessibility audit of the offices of the Ministry of Labour and Social Security, awareness-raising activities on the Disabilities Act, the review of the National Apprenticeship programme, and the draft coordinated social support services strategy.

25. It would be interesting to know if the Sexual Harassment Bill had been debated in Parliament during 2016 as scheduled and, if so, what the outcome had been. If it had not yet been considered by Parliament, he would like to know when the debate would take place. The delegation should provide additional information on the HeForShe campaign which had been launched in the State party in July 2016. Details on the progress made towards the target of training 7,000 front-line police workers would be appreciated, as would an update on the construction of regional emergency shelters for victims of gender-based violence, and on the establishment of the National Shelter Committee.

26. **Mr. Muhumuza** said that he wished to receive information on the measures taken to protect people living with HIV from discrimination in the workplace and on how such discrimination was punished. It was not clear what factors prevented the Government from consolidating all of its human rights legislation and mechanisms into a single comprehensive approach. Given the virtual moratorium on the death penalty in Jamaica, he wondered why the Government had not ratified the second Optional Protocol to the Covenant. The delegation should comment on reports that only one prisoner was being held on death row, a situation which in effect constituted solitary confinement.

27. **Mr. Vardzelashvili** said that he was encouraged by the news that the Government was committed to following the recommendations of the National Commission of Inquiry set up to investigate the circumstances surrounding the state of emergency announced in May 2010. He wondered if the delegation could provide a timeline for the implementation of those recommendations, which included major reform of the police. In the same regard, he trusted that the Government would continue to provide all necessary support to the Independent Commission of Investigations (INDECOM).

28. He was concerned that INDECOM had met with refusals on the part of security forces to provide relevant documentation and evidence. Since the National Commission of Inquiry and the Office of the Public Defender had faced similar problems, he wished to know whether national law in fact granted such exemptions to law enforcement personnel and whether there was genuine political will on the part of the Government to open all relevant archives to scrutiny.

29. The periodic report contained no information regarding a concern raised in the Committee's preceding concluding observations (CCPR/C/JAM/CO/3) about a lack of clarity in the respective mandates of INDECOM and the Office of the Director of Public Prosecutions with regard to powers to prosecute law enforcement personnel. According to information available to the Committee, that state of affairs had hindered INDECOM operations and, although a ruling of the Supreme Court had established that INDECOM did

indeed have authority to investigate, charge and arrest law enforcement officials without the approval of the Director of Public Prosecutions, that ruling had been appealed and the current situation was unclear. He wished to know what position the Government held in that regard and what steps it was taking to further strengthen the independence and effectiveness of INDECOM. It would be interesting to hear the delegation's comments on other concerns of the Committee surrounding the effective independence of INDECOM, such as certain procedural rules that required INDECOM to involve police officers in some of its activities and the fact that its finances were heavily dependent on voluntary donations.

30. **Ms. Cleveland** said that she understood that the Offences against the Person Act of 1864 criminalized same-sex intimacy between men only and that it could not be challenged under the Charter of Rights and Fundamental Freedoms because of a provision preventing legal challenges to pre-existing laws. In 1994, a similar law in another State party had been found by the Committee to be in violation of the Covenant. The Committee also understood that the legal definition of rape contemplated only vaginal penetration, which effectively meant that men could not be victims of rape, and that discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons was widespread in areas such as employment and housing. Could the delegation confirm whether that information was accurate and what steps the authorities intended to take to address the situation?

31. She would welcome information about any plans to protect people from discrimination on the basis of their health status, including HIV status, such as legal provisions, enforcement mechanisms, and a legislative framework to ensure meaningful implementation of the National Workplace Policy on HIV and AIDS. In particular, it would be useful to learn whether there were plans to increase financial and human resources in support of efforts to address stigmatization and discrimination and to improve reporting and redress systems?

*The meeting was suspended at 4.20 p.m. and resumed at 4.50 p.m.*

32. **Mr. McCook** (Jamaica) said the establishment of a national human rights institution consistent with the Paris Principles was currently before the Cabinet and a bill on that subject would be submitted to Parliament in due course. The inter-agency committee established within the Ministry of Foreign Affairs and Foreign Trade acted as a permanent mechanism for reporting under the universal periodic review and the Covenant. The inter-agency committee also effectively functioned as a permanent reporting mechanism for all the other human rights treaty bodies, although that broader mandate still had to be officially approved by the Cabinet.

33. He was not aware of any reports of police involvement in mob violence or in acts against LGBTI persons. In any case, the Jamaica Constabulary Force had reporting and monitoring systems in place to ensure oversight and to hold officers to account for their actions. There were direct lines of communication between the police and LGBTI groups. Moreover, the Office of the Director of Public Prosecutions had invited LGBTI persons to make presentations to its staff to help them improve their approach to future prosecutions involving LGBTI issues. No steps had been taken to amend the provisions of the Offences against the Person Act concerning same-sex intimacy, although the Act was under constant review.

34. No information was currently available concerning the impact of gender policy. However, he was in a position to confirm that there were four female ministers and he would shortly revert to the Committee concerning the number of female judges. Temporary measures regarding gender balance in the political sphere had been discussed in Parliament only in July 2016 so it was still too early to give a timeline for their implementation.

35. **Ms. Gordon** (Jamaica) said that, even in the absence of relevant legislation, most ministries had HIV/AIDS workplace policies. The Enabling Environment and Human

Rights Technical Working Group, which had been set up under the Sexual Health Agency of the National Family Planning Board, sought to support and protect the human rights of vulnerable groups, such as young people and persons with HIV/AIDS, through advocacy to reduce the stigma and discrimination associated with sexual and reproductive health issues.

36. **Ms. Palmer** (Jamaica) said that legislation on safe reproductive health had been before the Joint Select Committee of Parliament for some time. She was not in a position to inform the Committee when it would be approved.

37. **Mr. McCook** (Jamaica) said that the law merely specified that abortion was admissible on medical grounds without entering into detail about what those grounds were. The Government was of the view that the Constitution and the law provided sufficient protection for the rights of Jamaican citizens under the Covenant and had taken no action to re-accede to the Optional Protocol. The Covenant had been invoked by the Privy Council, which was the highest ranking body in the judicial system of Jamaica.

38. The General Legal Council, which was responsible for the continuing legal professional development of all practising lawyers, provided training in human rights as part of its programmes. Programmes for trainee legal practitioners also included human rights subjects.

39. **Ms. Palmer** (Jamaica) said that the sentencing guidelines on alternatives to imprisonment had yet to be completed, but would be made available for public comment as soon as they were finalized. The sentence of the sole remaining death-row inmate would be commuted to life in prison on the basis of the case *Pratt and Morgan v. The Attorney General for Jamaica and another (Jamaica)*. It should be noted that the application of the death penalty had been further restricted pursuant to a 2011 ruling of the Court of Appeal. The Government recognized the need for new prisons but current resources simply did not allow for it. Nevertheless, separate facilities had been created for juvenile offenders, and justices of the peace had been tasked with monitoring and reporting on detention conditions. The latest report had been transmitted to the Commissioner of Police for remedial action.

40. **Mr. McCook** (Jamaica) said that the Disabilities Act had come into force that month. The National Workplace Policy on HIV/AIDS protected persons living with the disease from discrimination but there currently was no formal enforcement. Capacity-building efforts were nonetheless under way at the Industrial Disputes Tribunal, and more than 1,000 judges had received training in the Policy.

41. **Ms. Palmer** (Jamaica), stressing that the executive branch had no control over the work of the legislative branch, said that the bill on sexual harassment had been tabled and would be discussed in Parliament as soon as it was placed on the agenda.

42. **Mr. Vardzelashvili** said that the State party should provide examples of the application of the law permitting abortion on medical grounds by an administrative or judicial body.

43. **Mr. Rodríguez Rescia**, noting that the murder rate in Jamaica had been among the highest in the world in 2014-2015 and that there had been a 20 per cent rise in the number of homicides, asked what the causes of such violence were and what measures had been adopted to reduce it.

44. **Mr. Iwasawa** said that he welcomed the decision of the Judicial Committee of the Privy Council which had shown that the Covenant, despite not having force of law in the country, could be used to interpret domestic law, including the Constitution. It would be interesting to hear examples of other cases where the Supreme Court or the Court of Appeal had used the Covenant or other human rights instruments to interpret domestic legislation. Re-acceding to the Optional Protocol would be useful since, by the State party's own

admission in its replies to the list of issues, not all the Covenant rights were adequately protected under domestic law.

45. **Ms. Cleveland** said that she would like to know whether legislation on access to reproductive health services was in fact pending. If it was, details on its content would be appreciated; if it was not, the delegation should indicate whether there were plans to implement the recommendations in the report of the Abortion Policy Review Advisory Group. Noting that, according to the World Health Organization, unsafe abortions were in the top four causes of non-violent death among women, she asked whether statistics were compiled from reports by doctors who treated women for injuries sustained during botched abortions and what steps were being taken to ensure that unsanctioned abortions did not endanger the health of the women who underwent them. She wished to know whether there was any evidence that maintaining the age of sexual consent at 16 was a barrier to access to reproductive health care and information for teenagers and, in the affirmative, what was being done to promote access.

46. **Mr. McCook** (Jamaica) said that the high murder rate was a matter of deep concern and the underlying social causes had been the subject of serious study and policies. Regarding the application of the Covenant, he recalled that the decision in the Pratt and Morgan case had hinged in part on the procedures undertaken pursuant to the Optional Protocol to the Covenant. However, it should not be inferred from the Committee's role in that case that the provisions of the Covenant could be invoked as a basis for a legal determination. Moreover, the Covenant rights were safeguarded under domestic laws and the Constitution; accordingly, it was sufficient to invoke those instruments. Unless the Committee had specific examples of inadequately protected rights, the Government maintained its position that it was unnecessary to re-accede to the Optional Protocol.

47. A ministerial policy adopted in 1975 permitted abortions when a registered medical practitioner deemed that a pregnancy was a threat to the mother's life or physical or mental health and when pregnancy resulted from rape or incest. In the first situation, the concurring opinion of two doctors was necessary for an abortion to be performed while, in the second, the woman was required to produce documentary evidence of the crime, namely a police report and medical examination. The policy permitted girls under 17 to obtain an abortion, provided that they were accompanied by a parent. Women were not permitted more than one abortion and all those who underwent the procedure received mandatory counselling on contraception.

*The meeting rose at 5.35 p.m.*