



## International Covenant on Civil and Political Rights

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### Human Rights Committee

100th session

Geneva, 11–29 October 2010

### **List of issues to be taken up in connection with the consideration of the third periodic report of Jamaica (CCPR/C/JAM/3)**

#### **Constitutional and legal framework within which the Covenant is implemented (art. 2)**

1. What is the status of the Covenant under domestic law? Can provisions of the Covenant be directly invoked before domestic courts? If so, please provide details on all cases in which this was done and the results thereof. Please state whether the Charter of Fundamental Rights and Freedoms, which is intended to replace Chapter III of the Constitution, has been enacted and incorporated into the Constitution. Please explain the Covenant rights that are guaranteed in this Charter. Please provide further information with regard to the exceptions to the principle of non-discrimination and how this is implemented.
2. Please provide information on the availability of remedies for individuals claiming that there has been a violation of the rights contained in the Constitution and the Covenant. Please provide further information on the obstacles to the effectiveness of existing remedies and the measures taken to address them. The Committee recalls that on 23 October 1997, the Government of Jamaica notified the Secretary-General of the United Nations of its denunciation of the Optional Protocol to the Covenant. Does Jamaica intend to re-accede to the Optional Protocol?
3. Please provide information on any national institutions, other than the courts, responsible for supervising the implementation of human rights in the State party and on their mandate. Have such institutions been established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles)? If no such mechanism exists, is there any initiative to introduce one?

#### **Non-discrimination, equality between men and women (arts. 2, para. 1; 3 and 26)**

4. Please indicate the legislative and administrative measures and recent court decisions, if any, relating to protection against discrimination in all fields, on any ground,

including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

5. Please provide information on the implementation of the National Gender Policy and its impact in improving the status of women. Please provide information on: (a) women's status in the political, economic and social life of the country; (b) levels of employment among women and the proportion of women in positions of responsibility both in the private and public sector; (c) whether women and men receive equal pay for equal work; and (e) the literacy and school enrolment rates for women as compared to those of men. Please indicate all legislative and other steps taken to eliminate the persistent patriarchal attitudes and deep-rooted stereotypes in society and in school textbooks, and measures to put an end to acts of discrimination, both in the public and private sectors, which impair the equal enjoyment of rights by women and men.

6. According to information before the Committee, homosexuals are subjected to discrimination and ill-treatment in the State party. Please indicate whether the State party intends to revise the definition of discrimination adopted in the Charter of Fundamental Rights and Freedoms to prohibit using gender identity and sexual orientation as grounds for discrimination. Furthermore, the Offences against the Person Act criminalizes consensual sexual activity between persons of the same sex, acts punishable by imprisonment of up to 10 years. Please provide information on the number of cases, if any, in which this provision has been applied, and whether there are any steps taken to decriminalize same-sex relationships.

#### **States of emergency (art. 4)**

7. According to information before the Committee, on 23 May 2010, the Governor-General of Jamaica issued a proclamation declaring a state of public emergency following the civil unrest after the Prime Minister announced the Government's intention to authorize the extradition of Michael Christopher Cooke (Dudus) to the United States of America. Please comment on reports that during the state of emergency at least 73 people were killed by agents of the State, and 4,000 were detained. Please explain the measures that have been taken, if any, to investigate the cause of the deaths and prosecute the alleged perpetrators. Furthermore, please indicate the extent to which Covenant rights could be derogated under national law and how this is in line with the provisions of the Covenant.

#### **Right to life (art. 6)**

8. According to information before the Committee, a total of 253 people were killed at the hands of the Police in 2009. Please comment on this allegation.

9. Please explain the measures taken, if any, to ensure that the new Independent Commission of Investigations, established to replace the Bureau of Special Investigations (BSI) and the Police Public Complaints Authority (PPCA) that were mandated to investigate cases of police violence and killings, is independent and provided with sufficient resources to carry out its mandate. Please provide data on the number of police officers that have been: (a) investigated for extrajudicial killings, including the number of inquests conducted and completed; (b) prosecuted; (c) acquitted; (d) convicted; and (e) sanctioned, and the nature of those sanctions.

10. According to information before the Committee, well-armed criminal gangs trafficking narcotics and guns are also responsible for much of the violence that leads to deaths in "inner-city" and "garrison" communities. Please provide information on the measures taken to deal with the violence between gangs that leads to deaths. Please provide

information on the measures taken, if any, to (a) disband these gangs, (b) disarm them, and (c) prosecute and punish all perpetrators.

11. Please provide information on the measures taken, if any, to protect the rights of human rights defenders against violence and killings. Please also comment on the measures taken, if any, to investigate and bring to justice the people that killed human rights activists Brian Williamson and Lenford “Steve” Harvey.

12. Please indicate whether, following the de facto moratorium on capital punishment, the State party intends to ratify the Second Optional Protocol to the Covenant and amend the Constitution, with the aim to abolish the death penalty. Please specify all crimes that incur the imposition of the death penalty?

13. According to information before the Committee, there is a high rate of teenage pregnancies, many of which result in unsafe abortion. Furthermore, the Committee notes that abortion is one of the leading causes of maternal mortality. Please state the measures adopted, if any, to promote access to and delivery of family planning services and contraceptives. Please provide information regarding the availability of abortion services.

### **Prohibition of torture and cruel, inhuman or degrading treatment or punishment (art. 7)**

14. According to information before the Committee, corporal punishment is lawful in schools and homes and is still on the statute books of the State party. Please explain the measures taken to eliminate all forms of corporal punishment in all settings. Please explain the steps taken to pass into law the draft bill that seeks to repeal the Flogging Regulation Act, 1903, and the Crime (Prevention of) Act, 1942.

15. Please provide information on: (a) the investigations and number of complaints received by the Director of Public Prosecutions against law enforcement and detention personnel related to incidences of torture and ill-treatment; (b) the type of charges brought against law enforcement officers; (c) the number of cases dismissed and the reasons for their dismissal; (d) the number of officials disciplined and the sanctions imposed; and (e) practical measures taken for the rehabilitation and compensation of victims of torture.

16. According to information before the Committee, there is a high incidence of sexual violence against women and girls in the State party, such that in 2009 alone the National Police reported 610 cases of rape and 511 cases of sexual abuse. Furthermore, research findings record that, in 2009, 49 per cent of the 750 girls aged between 15 and 17 years had experienced sexual coercion or violence. Reports further indicate that women and girls in inner-city communities are particularly exposed to gang violence arising from reprisals for being perceived to have reported criminal activities of gang members. Please provide information on the practical measures taken, if any, to: (a) promote reporting of sexual violence to the police; (b) combat all forms of violence against women and girls; and (c) investigate cases of sexual violence including rape, prosecute perpetrators and punish them with appropriate penalties.

17. Please provide information on the magnitude of the problem of domestic violence. What is the national legal framework to combat such violence, in particular measures for ensuring that acts of domestic violence are effectively investigated and perpetrators prosecuted and sanctioned? Please also provide information on any other steps taken to combat domestic violence, such as training for judges, prosecutors, police and health officers and awareness-raising campaigns for women on their rights and available remedies. In addition, please provide information on: (a) the number of complaints received; (b) investigations carried out; (c) the types of penalties imposed; (d) compensation awarded to

the victims and; (e) the number of safe shelters and any other resources allocated to assist victims of domestic violence.

18. Please provide information on the legal framework that regulates the protection of individuals from being extradited or forcibly returned to countries where they are likely to be subjected to torture or other inhuman or degrading treatment or punishment or other serious violations of human rights.

### **Elimination of slavery and servitude (art. 8)**

19. Please provide information on: (a) the State party's legislative framework for combating trafficking in human beings, in particular women and children; (b) the prevalence of this phenomenon, expressed in statistical data disaggregated by gender, age and country of origin; (c) the number of prosecutions, convictions and sanctions imposed on persons involved in human trafficking; (d) any training programmes for professionals involved in implementing the State party's measures against trafficking, including the police, the judiciary, members of the prosecution authorities and social workers; and (e) how are the human rights of the victims of trafficking protected.

### **Right to liberty and security of person and treatment of persons deprived of their liberty (arts. 9 and 10)**

20. Please provide information on permissible grounds for deprivation of liberty and redress mechanisms in place to address instances of unlawful arrest or detention. Please also comment on reports that during the state of emergency declared on 23 May 2010, about 4,000 people were arrested and detained by the Police. Please provide statistical data on the grounds for arrest. Please explain how these arrests were necessitated by the exigencies of the state of emergency.

21. Please provide information on the legislative requirements for placing persons in police custody and pretrial detention, including on the maximum length of custody and pretrial detention. Please also elaborate on the rights of persons while in police custody, including access to a lawyer, and on the maximum period of detention before an individual is brought before a judge. Furthermore, please comment on information before the Committee that the Government has proposed to extend the period of detention without bail to 60 days.

22. Please provide information on legislative and all other rules regarding treatment of all persons deprived of their liberty, and practical measures taken to monitor their effective application. Please also explain what procedures exist whereby a complaint of ill-treatment by prison or other officials in places of detention, including in psychiatric institutions, can be filed and duly investigated, perpetrators brought to justice and victims offered redress and compensation.

23. According to information before the Committee, the holding cells in Spanish Town, which are ten by ten feet, were designed to hold 50 detainees but now hold an average of 138 detainees. Please specify the measures that have been taken, if any, to address the problem of deteriorating prison conditions, overcrowding, attempted suicides and abuse in detention and prison facilities particularly in holding cells in Spanish Town and Hunts Bay police stations where detainees share dark, unventilated, damp and dirty-cramped cells.

24. According to information before the Committee, there is no segregation in detention and prison facilities between juveniles and adults, persons on remand and convicts. Reportedly, juveniles are often subjected to abuse, violence and rape. Please explain the

measures taken, if any, to ensure that suspects on remand and convicts, on the one hand, and juveniles and adults, on the other hand, are separated in detention and prison facilities. Please provide further information on the steps taken to ensure that alternative measures to detention are used in addressing juvenile crime, such as diversion, probation, counselling, community service and suspended sentences.

25. According to information before the Committee, on 22 May 2009, seven girl inmates died in a fire at the Armadale Juvenile Correctional Centre. According to the report by the Armadale Commission of Inquiry, the fire broke out when police negligently threw a teargas canister into the locked dormitory after girls had attempted to escape. Please provide information on the measures taken to hold accountable the police officers that were responsible for the death of the seven girls and those injured during the fire. Has the State provided any compensation to relatives of the victims? Please further explain the measures taken, if any, to implement the recommendations contained in the Keating report on the reform of children's homes and places of safety.

### **Access to justice (art. 14)**

26. According to information before the Committee, the judiciary is overly burdened, with a backlog of over 400,000 cases leading to inordinate delays in the delivery of justice. Please explain the steps taken to implement the Jamaican Justice Reform recommendations, which seek to eradicate a number of the negative factors impacting on the justice delivery system in the State party. Furthermore, please comment on the measures taken, if any, to improve legal aid representation, which is hampered by shortages of lawyers available to serve as duty counsel.

### **Freedom of opinion and expression, and incitement to violence (arts. 19 and 20, para. 2)**

27. Please provide detailed information on: (a) how freedom of opinion and expression is guaranteed in law and in practice, including on all aspects of circulating information in any form; (b) the existence of non-State controlled media; and (c) the legal regime that regulates the censorship of music. Furthermore, please state the measures taken, if any, to address expressions by "celebrities" and entertainers in support of violence, which allegedly incite violence against gays and lesbians.

### **Rights of persons belonging to minorities (art. 27)**

28. Concerning the Maroons, please provide information on the measures being taken, if any, to improve their access to education, employment and political participation in all decision making bodies particularly in those bodies whose decisions have a direct impact on their welfare, and more generally, how their rights under article 27 are protected.

### **Dissemination of information relating to the Covenant and the Optional Protocol (art. 2)**

29. Please provide information on the steps taken to disseminate information on the Covenant, the submission of the third periodic report of the State party, and its forthcoming examination by the Committee. Please also provide information on the involvement of representatives of ethnic and minority groups, civil society, non-governmental

organizations, and the national human rights institution in the preparatory process for the report.

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