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Summary record of the 3312th meeting (Chamber B)

Held at the Palais Wilson, Geneva, on Wednesday, 19 October 2016, at 10 a.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 10.05 a.m.

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

Fourth periodic report of Jamaica (continued) (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), recalling that the status of the Covenant in Jamaican domestic law had been raised during the Committee's interactive dialogue with Jamaica in 2011, said that the Covenant had not been invoked in any cases before the Jamaican courts. Under common law, there was a presumption of compatibility between the human rights instruments ratified by Jamaica and domestic law, which meant that any ambiguous terms found in national legislation or the Constitution had to be interpreted in a manner that respected the international obligations of Jamaica. The principle of legality was closely related to the presumption of compatibility. The general terms found in Jamaican laws and regulations, including the Constitution, had to be interpreted in a manner consistent with the observance of fundamental human rights. The nature and scope of the rights set forth in domestic legislation could be influenced by customary international law or treaties that had not been incorporated into domestic legislation. The serious consideration given to the matter of adherence to treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the decision to withdraw from the Optional Protocol to the Covenant, reflected the State's deliberate approach to the establishment of treaty obligations.
3. **Mr. Vardzelashvili** recalling the Committee's recommendation that torture should be defined as a separate crime under the State party's criminal law, said that he would like the delegation to comment on the fact that Jamaican criminal law still did not contain any specific provisions on torture or definitions of acts that could qualify as torture. He noted that, according to the State party report, all allegations of misconduct and human rights abuses were consistently investigated by the relevant authorities, but that since such complaints were not classified as torture it was difficult to retrieve information on the number of complaints. He therefore wondered how it could be concluded that allegations had been effectively and successfully investigated in the absence of such data. He would be interested to hear about the outcome of the legal proceedings in relation to the seven individuals housed at the Horizon adult correctional centre who had been subjected to inhuman treatment as well as the cases of the two individuals who had complained of being subjected to inhuman treatment in lock-ups. He wondered to what extent the police authorities were responsive to inquiries from the Office of the Public Defender about allegations of mistreatment and torture.
4. He requested information on the steps being taken to address the shortage of staff and judges, which presumably was one of the reasons for the backlog of cases before the courts. He wondered whether any amendments had been made to legislation on evidence and juries, for instance, to respond to procedural problems that also contributed to the backlog. He asked whether it was true that the Office of the Public Defender provided legal assistance to those who wished to bring constitutional complaints but could not represent them in court, and, if so, whether there were any plans to remedy the situation. He would welcome further information on the cases of the approximately 100 law enforcement officers before the Coroner's Court. Noting that the decisions of the Court were not binding on public prosecutors, he said that the delegation should shed light on the perceived value

of the institution. He would also appreciate information on the number of judges assigned to the Court and the measures that would be taken to deal with the backlog of cases. While welcoming the fact that the Government had undertaken to review the Child Care and Protection Act by March 2017, he asked why the Act had not been amended immediately following the initial decision to do so in 2013. He would be interested to know the status of the new amended draft. He would like to hear more about the plans to provide minors in conflict with the law with social or therapeutic assistance as an alternative to incarceration.

5. **Mr. Fathalla** said that he would welcome further information on the content and practical implementation of the guidelines for the protection of both national and non-national victims of trafficking. He would also appreciate information on the activities of the National Rapporteur on Trafficking in Persons since the establishment of the mandate in March 2015. He requested details of Jamaican legislation for the protection of refugees and the amendments to the Refugee Policy. Noting that 33 persons had been granted refugee status in the past three years, he asked how many persons had actually applied for such status in that time. With regard to the prevention of statelessness, he invited the delegation to comment on the argument put forward in the written replies that amending the provisions of the Jamaican Nationality Act concerning naturalization could overwhelm the State party's capacity to process applications for refugee status — a position that was not in line with the Committee's general comment No. 17. Noting that unaccompanied minors were not eligible to apply for refugee status and were instead referred to the Child Development Agency, he asked how many such referrals there had been, what procedures were in place and what services the Agency provided to those children. He would be interested to know what special privileges were given to Rastafarians under the amended Dangerous Drugs Act.

6. **Mr. Muhumuza** said that he welcomed the positive developments in the State party, including the establishment of several child-friendly police holding cells and the reduction in the number of children given correctional orders following the introduction of the Child Diversion Policy. It would be interesting to learn what steps were being taken to extend such measures to all facilities where children were detained. He wondered whether the Government planned to legally prohibit the incarceration of children in adult prisons, as required under article 10 of the Covenant, as part of the reform of the Child Care and Protection Act. While welcoming the fact that efforts were being made to implement the recommendations of the Keating report on reform of children's homes and that the State had accepted liability for all the cases in the Armadale juvenile correctional centre and was in the process of negotiating compensation with the affected parties, the Committee would appreciate details on the reparations effectively provided. With regard to non-violent forms of discipline, he asked what measures were being taken to prevent, deter and punish the use of corporal punishment against children at school, in the home and in other places of residence and detention, and to counter the belief that corporal punishment was a cultural practice rather than a violation of children's rights. He requested clarification of whether the Government intended to amend the Child Care and Protection Act to legally prohibit all forms of corporal punishment and provide for punishments for perpetrators, particularly given that the administrative measures being taken by the Ministry of Education to discontinue its use did not have the force of law.

7. **Mr. Iwasawa** said that he hoped that greater efforts would be made to raise awareness of the Covenant in Jamaica. Having noted the steps taken to improve national implementation of the Access to Information Act and to promote International Right to Know Day/Week, the Committee would like the delegation to comment on the allegations that access officers demonstrated inadequate knowledge of the Access to Information Act and habitually violated its provisions concerning response time and manner, and that the Act did not provide for the penalization of access officers who had failed to respond to applications for access to information. With regard to the scheduled review of the Act, he

would like to know what stage had been reached in the process and how soon the Act would be amended. The Committee was concerned that under the State party's framework governing the financial reporting of civil society organizations, the latter's freedoms of expression and peaceful assembly could be curtailed. Additional information on how the State party intended to regulate civil society organizations without restricting their freedoms would be appreciated. The Committee also wished to know whether NGOs involved in human rights advocacy work could obtain charitable status under the Charities Act, in the light of reports that applications from such NGOs had been denied. The protection of human rights defenders in Jamaica remained a source of concern for the Committee. It wished to know why the State party had rejected one recommendation on that issue in its first universal periodic review. The Committee would also like the delegation to comment on the reports that defenders of the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons had been threatened, assaulted and murdered, that such crimes often went unpunished and that one NGO working to protect children from sexual violence had suffered defamation in the media and received threats of criminal action from government entities.

8. **Ms. Cleveland** said that the Committee would welcome further information on how the legislation on abortion was implemented and whether, in practice, a woman could lawfully obtain an abortion if her pregnancy was deemed a threat to her life or to her mental or physical health.

The meeting was suspended at 10.55 a.m. and resumed at 11.20 a.m.

9. **Mr. Vardzelashvili** said that he would like the delegation to comment, firstly, on the problems that had arisen when the Jamaica Constabulary Force had refused, on legislative grounds, to provide information to the Office of the Public Defender and, secondly, on the effectiveness of the memorandum of understanding between the Office and the Constabulary Force.

10. **Mr. McCook** (Jamaica) said that the State party would provide more information in writing on measures taken to follow up on the situation involving the Horizon adult correctional centre. There was, in fact, no formal memorandum of understanding between the Jamaica Constabulary Force and the Office of the Public Defender; however, a mechanism had been set up to facilitate communication between the two parties, and had proved effective thus far. He noted the Committee's concerns regarding the definition of torture under Jamaican legislation and the fact that Jamaica had not acceded to the Convention against Torture.

11. **Ms. Palmer** (Jamaica) said that all victims of trafficking, whether they were Jamaican nationals or not, were protected by the provisions of the standard operating procedures and received equal treatment under Jamaican legislation, including access to shelter, health care and counselling. The National Rapporteur on Trafficking in Persons and the Human Trafficking Officer conducted interviews with the National Taskforce against Trafficking in Persons, requested information and verified the information provided. Their first annual report was in draft form and needed to be finalized for submission to Parliament. She was not in a position to provide additional information on the activities of the National Rapporteur, who reported directly to Parliament. With regard to the case backlog facing the courts, simply increasing the number of judges would not solve the problem. Therefore, under the Justice Reform Agenda, new legislation had been introduced which allowed evidence to be given by video link and expanded the pool of persons available for jury duty. With regard to the provision of legal aid, the Government of Jamaica was seeking to maximize the limited resources at its disposal. The number of attorneys available for jury duty was increasing and a new legal aid bus service had been introduced.

12. **Ms. Andrews** (Jamaica) said that under the Coroners Act, which had last been amended in 2009, there were two types of coroner in Jamaica: the parish judges, who provided coroner services in each parish, and the Special Coroner, who addressed matters relating to State action. Parish judges, also known as ex-officio coroners, dealt with all types of cases, ranging from fatal shootings to traffic accidents. The disposal rate of 30 cases per year mentioned in the replies of Jamaica to the list of issues (CCPR/C/JAM/Q/4/Add.1) concerned the Special Coroner only; the figure for parish judges was higher.

13. **Mr. McCook** (Jamaica) said that more detail on the Child Care and Protection Act would be provided in writing. The locations of the child-friendly facilities had been selected on the basis of a strategic, regional approach, taking into account logistical issues such as accessibility, with the aim of ensuring that children could be placed in safe facilities of an appropriate standard.

14. Children were detained in lock-ups only in extreme cases, as a last resort and for the minimum period necessary. When children detained at police stations were deemed to be in need of care or protection, the Child Development Agency promptly placed them in appropriate facilities. Such interventions could be initiated either by the police themselves or by officers of the Agency during their visits to police stations. The Child Justice Guidelines of the Office of the Children's Advocate covered conditions of detention and transportation of children and stipulated that those not charged within 24 hours should be released to the care of their parents or guardians, provided that would not compromise an investigation or raise security concerns. A legal aid counsel had been mandated by the Ministry of Justice to ensure that every child had a legal representative. An amendment to the Child Care and Protection Act that was currently under consideration would remove the use of the term "uncontrollable" from the Act.

15. The Child Diversion Policy received funding from the United Nations Children's Fund (UNICEF) and from the Government's Citizen Security and Justice Programme, which itself was funded with support from the Governments of Canada and the United Kingdom of Great Britain and Northern Ireland and the Inter-American Development Bank. Noting that the status of the compensation and processing of payments for victims of the Armadale fire had been described in detail in the State party's report, he said that the delegation could provide further details in writing should the Committee have any further requests for information. The Government was strongly committed to the Safe School Policy and supported the elimination of corporal punishment from schools, but the precise timeline for implementation of the related legislation had not been set.

16. **Ms. Andrews** (Jamaica) said that, under the Access to Information Act, when access was conferred to an official document, any defacing, blocking, erasing, destruction or concealment of the document in question with the intention of preventing its disclosure was punishable by up to 6 months of imprisonment, a fine of up to 500,000 Jamaican dollars, or a combination of imprisonment and a fine.

17. **Mr. McCook** (Jamaica) said that information on the number of applications for refugee status and the number of unaccompanied minors placed in the care of the Child Development Agency would be submitted in writing. In the context of the universal periodic review mechanism, two claims relating to the fate of human rights defenders had been made, one putting forward very serious allegations of violence, including the killing of human rights defenders, and the other relating to defamation. It was unclear what action the Committee expected of the State party. Obviously, the killing of any Jamaican gave rise to action by the system of justice. The delegation had received no reports relating to specific targeting of human rights defenders. If such allegations were put forward, they should include details so that the State party could reply appropriately about the legal proceedings that had been engaged in the cases in question. While there was no requirement for

charitable organizations to be registered in order to carry out activities, the Ministry of Finance had established general practices of fiduciary responsibility and specific rules for their application. If the Committee had any information that such rules were discriminatory against charitable organizations engaged in advocacy, it should specify which ones so that the State party could reply appropriately.

18. **Ms. Andrews** (Jamaica) said that the Charities Act of 2013 set out the criteria to be met by charitable entities. The law did not preclude any specific activities or exclude any groups.

19. **Mr. McCook** (Jamaica) said that no legislation was currently pending to change the policy with regard to abortion. The amendment to the Dangerous Drugs Act provided a dispensation allowing the use by Rastafarians of marijuana or ganja as a sacrament, for religious purposes.

20. **The Chair**, noting that some of the information provided by the delegation was very general in nature, said that the delegation should clearly indicate which criteria applied in practice to the registration of charitable organizations.

21. **Mr. Fathalla** said that the Committee was concerned about the issues facing the Maroon communities in respect of registration, the definition of their borders and disputes about their rights to resources in the subsoil.

22. **Mr. Vardzelashvili** said that the Committee required more information on the role of the Coroner's Court. Based on the information provided by the State party, coroners, owing to their dual functions, had to deal with cases on their dockets in addition to the cases brought to them in their capacity as coroners, thus resulting in inevitable backlogs. It would be of interest to the Committee to learn how many cases resolved each year by the Coroner's Court and by the parish courts and the amount of backlog they currently faced. The delegation should also comment on the extent to which the police had an impact on the activities of the Coroner's Court and whether the effectiveness of the courts was thus undermined. Further information on the availability of financial resources for the judiciary and in the number of judges would likewise be appreciated. Lastly, he would like to know whether the draft law changing the policy for the incarceration of children had already been submitted for the legislature's approval.

23. **Mr. Iwasawa** said that during the discussion held during the first review of the human rights situation in Jamaica under the universal periodic review mechanism, the United States delegation had issued a recommendation to ensure the protection of defenders of the rights of LGBTI persons and to take measures to ensure that LGBTI could fully and freely exercise their rights without fear of attack or reprisal. The Government of Jamaica had not supported the recommendation, considering it to be based on false or erroneous premises. A report from the International Service for Human Rights cited in the stakeholders' document submitted as part of the second cycle of the universal periodic review had indicated that LGBTI persons had been murdered, beaten and threatened and that impunity for such crimes remained common. The Committee would welcome the delegation's comments on that report.

24. **Mr. McCook** (Jamaica) said that the delegation would provide the Committee with a copy of the Charities Act, which would clarify the criteria requested. There was no requirement for advocacy groups to meet specific standards to gain any kind of eligibility. The delegation would provide information in writing on the number of inquests and cases taken on by the Coroner's Court. Coroners had to carry out dual functions by law.

25. **Ms. Andrews** (Jamaica) said that while the executive branch dealt with the legal provisions relating to the appointment of judges, the actual appointment of judges was strictly the prerogative of the Judicial Services Commission, which was independent of the

executive branch. There were already provisions in the legislation for the appointment of more judges. In the framework of the reform agenda, consideration was being given to the possibility of hiring retired judges to help reduce the backlog of work, and to divert certain cases away from the courts to lighten the burden on them.

26. **Mr. McCook** (Jamaica) said that he was not aware of any registration problems regarding the Maroon communities. If the Committee had reports of problems relating to registration, border disputes and issues arising from access to subsoil resources, the delegation could address any specific questions in its forthcoming written submission. While he was aware of the concerns put forward by the United States during the first round of the universal periodic review, the position of Jamaica had not changed.

27. **Mr. Fathalla** said that it was his understanding that the borders of Maroon areas had not been definitively delimited but that the Government maintained that it recognized the borders drawn by the colonial power prior to independence. He would like an update on the current situation.

28. **Mr. Iwasawa** said that his query regarding the 2013 Charities Act had been prompted by reports that the application for charitable status submitted by Jamaicans for Justice, a human rights advocacy organization, had been rejected on the grounds that engaging in advocacy work with a view to influencing public policy was a political rather than charitable activity, even though advancement of human rights was one of the charitable purposes listed in the Act. For that reason he would appreciate clarification as to the eligibility criteria that human rights defenders seeking charitable status must satisfy.

29. **Mr. McCook** (Jamaica) said that the eligibility criteria, including a comprehensive list of recognized charitable purposes, were set forth in the Act.

30. **Ms. Waterval** said that she would like further information on the rights of the Jamaican Maroons, specifically, about the demarcation of their traditional lands, their rights in respect of that land and government policy for the use of natural resources within their lands. She also wished to know whether the Maroons were recognized as legal persons in Jamaica.

31. **Mr. McCook** (Jamaica) said that the rights of the Maroons, including their land rights, had been agreed between the Maroon communities and representatives of the British Crown prior to the country's independence. The Government of Jamaica continued to recognize those rights and to celebrate Maroon culture and history. Details of government policy for the use of underground resources and other natural elements would be provided subsequently in writing.

32. **Mr. Vardzelashvili**, noting that the State party indicated in its replies to the list of issues that around 100 police officers were currently facing charges, said that he would appreciate more information about both the particular cases and the general context. Referring to NGO reports of an unwillingness among police officers to cooperate in investigations led by the Coroner's Office, he questioned the efficacy of a system that allowed police officers to carry out important parts of inquiries when the police forces themselves were under investigation. More detail about what was being done to reduce the backlog of cases involving law enforcement personnel would be useful.

33. **Ms. Cleveland** said that, pursuant to the definition of marital rape contained in the 2009 Sexual Offences Act, rape was recognized in the context of marriage only in certain circumstances. Those restrictions had led the Committee on the Elimination of Discrimination against Women to recommend the removal of all restrictive conditions from the relevant provisions. She would appreciate an update on progress towards compliance with that recommendation.

34. **Mr. McCook** (Jamaica) said that the Committee on the Elimination of Discrimination against Women had been invited to present its concerns before the Joint Select Committee that had been appointed to review various provisions of the Sexual Offences Act, indicating that the Government took the concerns raised very seriously. However, until the Joint Select Committee published its report, he preferred not to comment on the legislative amendments expected to result from the review.

35. Responding to questions raised at the Committee's 3310th meeting, he said that approximately 70 per cent of murders in Jamaica were attributable to gang warfare, as was frequently the case in inner cities elsewhere. Other causes included domestic violence, reprisal killings, international organized crime such as drug trafficking and the guns-for-drugs trade. The violence was generally directed at identifiable targets, their associates and family members and was concentrated in Jamaica's poorer communities. Violent crime and murder rates had fallen in the first half of 2016 but the Government recognized the seriousness of the challenge and continued to give it its fullest attention.

36. The Jamaica Constabulary Force had made huge strides in transforming the behaviour and attitudes of its members since adopting the policy. However, he was unable to provide figures attesting to the impact of the policy on dealings with members of the LGBTI community because the police did not solicit information on sexual identity or orientation and disclosure was not obligatory. Cases of domestic violence and allegations of abuse were handled in accordance with the Domestic Violence Intervention Training Programme run by the Constabulary Force, but whenever it became evident that a member of the LGBTI community was involved, the investigating police officers were also required to consult the Diversity Policy. The Policy set out standard operating procedures for interaction with individual members of diverse groups that were designed to eliminate all forms of unfair bias and to improve public confidence by demonstrating integrity, tolerance and understanding. Various mechanisms, including redress through the courts, were available to citizens who considered themselves to be victims of discrimination.

37. His responsibilities for mission staff in his role as Ambassador had made him personally aware of the unfair treatment that persons living with HIV/AIDS were likely to face and the challenges to eliminating such inequalities. The Ministry of Foreign Affairs and Foreign Trade, like all other ministries, was committed to ensuring that an appropriate policy was in place and it was in part that increasing sensitization that had prompted the current policy review. Compliance with the policy, which protected all persons against discrimination on account of their HIV status, was voluntary at present, but capacity-building and training initiatives were under way with a view to increasing compliance among members of the court system, including judges, and among members of the Industrial Disputes Tribunal.

38. The Enabling Environment and Human Rights Unit of the National Family Planning Board promoted a supportive environment in which all Jamaicans, including persons living with HIV, young people and other vulnerable groups, were protected and socially included. That protection and inclusion was facilitated by policies and programmes designed to reduce the stigma and discrimination associated with sexual and reproductive health issues, including family planning, HIV/AIDs and sexually transmitted infections. Sexual and reproductive health policy was also currently being reviewed by a parliamentary joint select committee. As a general rule, contraceptives and counselling on reproductive health issues were freely available from public health facilities.

39. Gender policy was scheduled to be reviewed before the end of the current fiscal year. Women were currently well represented in high-level positions, accounting for 78 of a total of approximately 130 judges, including 27 of around 50 Supreme Court judges and 4 out of 7 Appeal Court judges. The Chief Justice was a woman, as were four cabinet ministers, including, for the first time, the country's Minister of Foreign Affairs.

40. There had been a clear downtrend in maternal mortality rates since the adoption of the Programme for the Reduction of Maternal and Child Mortality three years previously. For 2015, the World Bank had calculated the rate at 89 maternal deaths for every 100,000 live births. Since the HeforShe campaign had been launched in Jamaica only in July 2016, it was too early to assess its impact. The Government was in dialogue with partners to identify suitable locations for the three regional emergency shelters that it planned to open in the next three years and interministerial discussions towards establishing a National Shelter Committee had already commenced.

41. The recommendations of the National Commission of Inquiry set up to investigate the events that had taken place in West Kingston in May 2010 were currently before the Cabinet and a retired Appeal Court president had been appointed to chair the committee that would determine the compensation payable to injured parties. Thus, the authorities were steadily advancing towards resolution and reparation.

42. The Independent Commission of Investigations received annual funding from the State budget in excess of 350 million Jamaican dollars to cover its regular operations. That amount represented an increase over previous years. It received additional funding support from bilateral and international partners, as did other elements of the justice reform programme.

43. The Government was aware of the need to improve and expand prison facilities. Plans had been in existence for several years and would be implemented as soon as sufficient resources were available. The Department of Correctional Services was making efforts to address the sanitation and other concerns linked with overcrowding. Psychiatric services were available in prisons and, in order to prevent sexually transmitted infections, contraceptives were provided to prisoners on request. The Ministry of Justice was working to resolve the issues surrounding pretrial detention and to respond to the recommendations resulting from the review of the lock-up system prompted by the death of Mario Deane. He undertook to provide the Committee with written responses to all pending issues within the established deadline.

The meeting rose at 1 p.m.