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Human Rights Committee

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

Concluding observations of the Human Rights Committee

Jamaica

1. The Committee considered the third periodic report submitted by Jamaica (CCPR/C/JAM/3) at its 2838th and 2839th meetings (CCPR/C/SR.2838 and CCPR/C/SR.2839), held on 19 and 20 October 2011. At its 2856th meeting (CCPR/C/SR.2856), held on 1 November 2011, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Jamaica, albeit 10 years late. The Committee expresses appreciation for the information contained therein and for the opportunity to renew its constructive dialogue with the State party. The Committee is grateful to the State party for its written replies (CCPR/C/JAM/Q/3/Add.1) to the list of issues, 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 steps taken by the State party:

- (a) Enactment of the Trafficking in Persons Act of 2007;
- (b) Enactment of the Child Care and Protection Act of 2004; and
- (c) Establishment of the Independent Commission of Investigations (INDECOM) in 2010.

4. The Committee also welcomes the ratification of the following international human rights instruments:

- (a) Convention on the Rights of Persons with Disabilities on 30 March 2007; and
- (b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 26 August 2011.

C. Principal matters of concern and recommendations

5. While welcoming the establishment of the Office of the Public Defender and the Bureau of Women's Affairs, the Committee is concerned that the State party has not yet established a national institution in accordance with the Paris Principles (General Assembly resolution 48/134) (art. 2).

The State party should establish an independent national human rights institution, and provide it with adequate financial and human resources, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

6. While taking note that most of the provisions of the Covenant are contained in the Constitution of the State party under the Charter of Fundamental Rights and Freedoms, the Committee is concerned that the provisions of the Covenant cannot be directly invoked before domestic courts (art. 2).

The State party should take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before domestic courts. In this regard, the State party should take effective measures to widely disseminate the Covenant in the State party.

7. The Committee is concerned that the State party does not intend to re-accede to the Optional Protocol, which gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by States parties to the Protocol (art. 2).

The State party should reconsider its decision not to re-accede to the Optional Protocol to the Covenant, providing the Committee with the competence to examine individual complaints, with a view to ensuring that the rights of individuals to an effective remedy are strengthened.

8. While welcoming the adoption of the Charter of Fundamental Rights and Freedoms in April 2011, the Committee regrets that the right to freedom from discrimination is now expressed on the grounds of "being male or female", failing to prohibit discrimination on grounds of sexual orientation and gender identity. The Committee is also concerned that the State party continues to retain provisions under the Offences against the Person Act which criminalize consensual same-sex relationships, thus promoting discrimination against homosexuals. The Committee further regrets reports of virulent lyrics by musicians and entertainers that incite violence against homosexuals (arts. 2, 16, 26).

The State party should amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity. The State party should also decriminalize sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant and put an end to prejudices and the social stigmatization of homosexuality. In this regard, the State party should send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation, and should ensure that

individuals, who incite violence against homosexuals, are investigated, prosecuted and properly sanctioned.

9. The Committee regrets reports of prevalent societal stigmatization of people with HIV/AIDS, which conflates HIV/AIDS with homosexuality. The Committee is concerned that this stigmatization, which is partly fuelled by the laws that criminalize consensual same-sex relationships, hampers access to treatment and medical care by persons living with HIV/AIDS, including homosexuals (arts. 2, 6 and 26).

The State party should take concrete measures to raise awareness of HIV/AIDS with a view to combating prejudices and negative stereotypes against people living with HIV/AIDS, including homosexuals. The State party should also ensure that persons living with HIV/AIDS, including homosexuals, have equal access to medical care and treatment.

10. The Committee is concerned at the lack of clarity on the interplay between INDECOM and the Office of the Director of Public Prosecutions with regard to the conduct of investigations and prosecutions (arts. 2, 6 and 7).

The State party should clarify the mandates of INDECOM and the Office of the Director of Public Prosecutions with regard to powers to prosecute law enforcement personnel under the investigation of INDECOM, to ensure that there is no conflict of mandates.

11. The Committee is concerned at reports that the Office of the Director of Public Prosecutions is inefficient, as it fails to expedite the initiation and prosecution of criminal proceedings to the extent that there are reports of inordinate delays in prosecutions (arts. 2 and 14).

The State party should take steps to ensure that the Office of the Director of Public Prosecutions efficiently discharges its prosecutorial functions.

12. While welcoming the adoption of the National Refugee Policy in 2009, the Committee regrets the lack of legislation on asylum-seeker and refugee protection. The Committee further regrets that refugees are not issued with identification cards except for the Convention Travel Document, which is not well-known in the State party and creates obstacles for them in the equal exercise of a wide range of social and economic rights (arts. 2 and 26).

The State party should enact legislation on the protection of the rights of asylum-seekers and refugees. Furthermore, it should ensure that asylum-seekers and refugees are provided with recognised identification cards to ensure equal access to social and economic opportunities in the State party.

13. While welcoming the adoption of the National Policy for Gender Equality, the Committee notes with concern that women remain underrepresented in both the public and private sectors, particularly in decision-making positions (arts. 2, 3 and 26).

The State party should strengthen its efforts to increase the number of women in decision-making positions in the public and private sectors through the implementation of new practical initiatives including, if necessary, appropriate temporary special measures to give effect to the provisions of the Covenant.

14. The Committee is concerned at the prohibition of abortion, which compels pregnant women to seek clandestine and harmful abortion services. The Committee is further concerned at reports of high rates of teenage pregnancies in the State party, where it is reported that 20 per cent of all pregnancies in the State party occur among teenage girls (arts. 6 and 17).

The State party should amend its abortion laws to help women avoid unwanted pregnancies and not to resort to illegal abortions that could put their lives at risk. The State party should take concrete measures in this regard, including a review of its laws in line with the Covenant. Furthermore, the State party should ensure that reproductive health services are available and accessible to all women and girls.

15. The Committee expresses its concern at threats against and violent assaults and killings of human rights defenders in the State party (arts. 6, 9 and 19).

The State party is urged to take immediate action to ensure effective protection of human rights defenders whose lives and security are under threat due to their professional activities. In this regard, the State should always ensure the prompt, effective, thorough, independent and impartial investigation of threats, violent assaults and murders of human rights defenders and, when appropriate, prosecute and institute proceedings against the perpetrators of such acts and provide compensation to the victims or members of their families.

16. The Committee regrets the continued reports of cases of extrajudicial executions by law enforcement officers. It further regrets that allegations of extrajudicial killings have, in most cases, not been effectively investigated, which perpetuates impunity. The Committee is also concerned at reports of excessive use of force by law enforcement personnel, particularly during the state of emergency between May and July 2010 where 73 civilians were killed by law enforcement personnel (art. 6).

The State party should closely monitor allegations of extrajudicial killings and ensure that all such allegations are investigated in a prompt and effective manner with a view to eradicating such crimes, bringing perpetrators to justice and hence fighting impunity and providing effective remedies to victims. In this regard, the State party should ensure the Independent Commission of Investigations (INDECOM) is adequately resourced to be able to carry out independent and effective investigations into alleged cases of extrajudicial killings and assaults by law enforcement personnel.

17. While noting the progress made by the State party when it lifted the mandatory death sentence for certain crimes in 2005 and that the State party has not carried out judicial executions since 1988, the Committee is concerned that the State party does not intend to abolish the death penalty (art. 6).

The Committee encourages the State party to abolish the death penalty and to accede to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

18. The Committee notes with regret the continuing reports of gender discrimination and sexual harassment in the State party. The Committee regrets the lack of comprehensive legislation clearly proscribing gender discrimination and sexual harassment in employment (arts. 2, 3 and 7).

The State party should adopt a comprehensive approach to preventing and addressing gender discrimination and sexual harassment in all its forms and manifestations. In this regard, the State party should improve its research and data collection methods to establish the magnitude of the problem, its causes and consequences on women. The State party should also consider adopting comprehensive legislation that clearly prohibits gender discrimination and sexual harassment in employment.

19. The Committee regrets that incidents of rape and domestic violence against women are prevalent in the State party. The Committee further regrets the lack of shelters for victims of domestic violence (art. 7).

The State party should strengthen its efforts to combat gender-based violence and to ensure that cases are dealt with in an appropriate and systematic manner by, inter alia, investigating, prosecuting and punishing the perpetrators. It is encouraged, in particular, to increase the training of the staff in its Victim Support Unit and the Police on violence against women, including sexual abuse and domestic violence. Furthermore, the State party should provide adequate shelters for victims of gender based violence including domestic violence.

20. While recognizing that corporal punishment as a penalty for crime has been abolished by judicial decision, the Committee expresses its regret that it remains legal in the State party, which permits its use in the education system and the home, where it traditionally continues to be accepted and practised as a form of discipline by teachers, parents and guardians (arts. 7 and 24).

The State party should take practical steps to put an end to corporal punishment in all settings by passing the bill that seeks to repeal the Flogging Regulations Act and the relevant provisions of the Crime (Prevention of) Act. The State party should promote non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.

21. While noting that torture is prohibited under the Charter of Fundamental Rights and Freedoms, the Committee is concerned that torture is not defined as a separate offence under the State party's criminal legislation. The Committee is also concerned about the continued occurrence of torture and ill-treatment by law enforcement authorities, the limited number of convictions of those responsible, and the insufficient sanctions imposed on the perpetrators (art. 7).

The State party should:

(a) **Define torture as a separate offence to comply with article 7 of the Covenant;**

(b) **Guarantee that allegations of torture and of cruel, inhuman or degrading treatment are investigated by an independent authority, that the perpetrators of such acts are prosecuted and punished accordingly and that the victims receive adequate reparations;**

(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; and**

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

22. The Committee takes note of the enactment of the Trafficking in Persons Act in 2007 and the establishment of the National Taskforce against Trafficking in Persons in 2005. The Committee is concerned at the prevalence of trafficking in persons for sexual exploitation and forced labour. The Committee is particularly concerned at the low level of investigations, prosecutions and convictions in this area, and at the lack of prevention and protection mechanisms for victims, including rehabilitation schemes (art. 8).

The State party should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking flows from, to and in transit through its territory. The State party should train its police officers, border personnel, judges, lawyers and other relevant personnel in order to raise awareness of this phenomenon and the rights of victims. Furthermore, the State party should ensure that all perpetrators of trafficking in persons are investigated, prosecuted, and if convicted, adequately sanctioned, and should guarantee that adequate protection, reparation

and compensation are provided to the victims. Prevention and rehabilitation programmes for the victims should also be established.

23. The Committee is particularly concerned at reports of overcrowding and deplorable sanitary conditions in the State party's prisons and places of detention, below minimum standards, and at the limited application of alternatives to imprisonment. The Committee is also concerned at the failure to ensure that minors detained are held separately from adults, and accused persons from convicted persons (art. 10).

The State party should, as a matter of urgency, adopt effective measures against overcrowding in detention centres and ensure conditions of detention that respect the dignity of prisoners, in accordance with article 10 of the Covenant. The State party should put in place a system to segregate accused persons from convicted persons and minors from other prisoners. The State party should, in particular, take steps to ensure that the Standard Minimum Rules for the Treatment of Prisoners are respected. Furthermore, the State party should consider the wider application of alternative non-custodial sentences in order to alleviate the problem of overcrowding in prisons.

24. While noting with interest the progress made to reform the justice sector, the Committee remains concerned at the inordinate delays in the dispensation of justice. The Committee is also concerned at the limited availability of legal aid services due to the shortage of lawyers to serve as duty counsel and the uncompetitive rates paid to legal aid counsel (art. 14).

The State party should urgently pursue efforts to reform the justice sector by implementing the Jamaican Justice Reform recommendations to ensure speedy and fair trials. Furthermore, the State party should ensure that the necessary budgetary allocation and human resources are provided to all legal aid clinics in the State party. In this regard, the State party should enhance the availability of lawyers that provide legal services on a pro bono basis and continuously review the fee structure for legal aid services to keep these rates competitive.

25. While noting the progress made in implementing the recommendations in the Keating report on the reform of children's homes and places of safety, the Committee is concerned that 40 per cent of these recommendations have not been implemented. The Committee is also concerned that, although the State party accepted liability for the negligence of public officials that caused the fire at the Armadale Juvenile Correctional Centre, the families of the victims have not received compensation (arts. 2, 9 and 10).

The State party should take all necessary measures, including by seeking international support, in order to fully implement all the recommendations made in the Keating report. Furthermore, the State party should, as a matter of urgency, ensure that families of the victims of the fire at the Armadale Juvenile Correctional Centre receive adequate compensation.

26. The State party should widely disseminate the Covenant, the text of the third periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations, so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also requests the State party, when preparing its fourth periodic report, to broadly consult with civil society and non-governmental organizations.

27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 8, 16 and 23 above.

28. The Committee requests the State party, in its next periodic report, due to be submitted on 2 November 2014, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.
