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|   |  **ADVANCE UNEDITED VERSION** |  |

**Human Rights Committee**

**118th session**

17 October - 4 November 2016

Agenda item 5

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

 Concluding observations on the fourth periodic report of Jamaica[[1]](#footnote-2)\*

 Draft prepared by the Committee

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

 A. Introduction

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

 B. Positive aspects

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

(a) Enactment of the Law Reform (Flogging and Whipping) (Abolition) Act of 2013;

(b) Enactment of the Disability Act of 2014;

 (c) Appointment of the National Rapporteur on Trafficking in Persons in 2015.

4. The Committee also welcomes the ratification of, or accession to, the following international instruments by the State party:

 (a) The 1961 Convention on the Reduction of Statelessness on 9 January 2013.

 C. Principal matters of concern and recommendations

 National Human Rights Institution

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

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

**National Mechanism for Reporting and Follow-Up**

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

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

**Application of the Covenant**

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

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

**Optional protocol**

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

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

**Persons with disabilities**

13. While welcoming the enactment of the Disability Act of 2014 and measures taken by the State party to promote inclusion of persons with disabilities, the Committee expresses its concern that persons with disabilities continue to face challenges, including access to public buildings and services (arts. 2 and 26).

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

**Prohibition of discrimination**

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

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

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

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

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

**People living with HIV/AIDS**

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

**20. The State party should amend its legislation to protect from discrimination based on health status and to ensure better protection of people living with HIV/AIDS, including vulnerable population, such as LGBT persons and women and girls who contracted HIV, especially as a result of sexual violence. The State party should intensify its work with relevant stakeholders and allocate adequate financial and human resources to implement the National HIV/AIDS Workplace Policy and to ensure the adequate functioning of the National HIV Reporting and Redress System as well as continue to undertake awareness-raising efforts to combat stigmatization and discrimination of people living with HIV/AIDS.**

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

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

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

**Violence against women, including domestic violence**

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

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

**Voluntary termination of pregnancy**

25. The Committee is concerned at the high levels of maternal mortality resulting from unsafe abortions, and the lack of official data on the number of clandestine abortions and its linkage to high maternal mortality. The Committee also reiterates its concern at the general criminalization of abortion in the Offences against the Person Act (2009), including in cases of pregnancies resulting from rape, incest, and in cases of fatal foetal abnormality. It is concerned about a lack of access of girls below the age of 16 to sexual and reproductive health information and services without parental consent, especially in the light of the high incidence of adolescent pregnancy and incest in the State party (arts. 3, 6, 7 and 17).

**26. The State party should, as a matter of priority, amend its abortion legislation to help women address unplanned pregnancies and not to resort to illegal abortions that could put their lives at risk. It should further take measures to protect women against the health risks associated with unsafe abortions by improving its monitoring and data collection on women’s access to health care and by enabling access to sexual and reproductive health information and services to all women, including girls under the age of 16.**

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

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

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

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

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

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

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

**32. The State party should expedite its efforts to reduce overcrowding in places of detention, including by resorting to alternatives to imprisonment, and improve conditions of detention, particularly with regard to sanitary conditions and access to medical care, in accordance with article 10 of the Covenant and the Revised Standard Minimum Rules for the Treatment of Prisoners (“the Nelson Mandela rules”). The State party should adopt legislation governing pre-trial detention and put in place a system separating accused persons from convicted persons.**

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

**34. The State party should:**

1. **Amend its criminal law to ensure that all act of torture as contained in article 7 of the Covenant and internationally established norms are prohibited and sanctioned with penalties commensurate with the gravity of such crimes;**
2. **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, if convicted, punished with penalties commensurate with the gravity of the crime, and that the victims receive adequate compensation;**
3. **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**
4. **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 victims.**

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

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

**Protection against trafficking in persons**

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

**38. The State party should continue its efforts in training and capacity building of professionals who support victims of trafficking. It should allocate adequate human and financial resources to the Office of the National Rapporteur. It should also ensure that victims of human trafficking enjoy the rights in accordance with the Covenant and are not returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant.**

**Refugees and asylum seekers**

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

**40. The State party should enact legislation on the protection of the rights of refugees and asylum-seekers, provide refugees with identification cards, and facilitate access to asylum procedures for persons in order to protect them from being returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant.**

**Right to an effective remedy and fair trials**

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

**42. The State party should pursue justice reform to ensure speedy and fair trial, including the necessary budgetary allocation and human resources and** **strengthening the capacity of its legal aid in any case when the interests of justice so require.**

**The rights of the child**

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

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

**Corporal punishment**

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

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

**Freedom of expression and human rights defenders**

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

**48. The State party should take measures to enhance full implementation of its law on access to information, including training of officers, public information campaign and accessible complaint mechanism. In accordance with General Comment No. 34, the State party should further ensure that consideration and granting charitable status to NGOs is done on a non-discriminatory basis and not obstructs or delimits the work of human rights defenders as acknowledged under the Declaration on Human Rights Defenders (A/RES/53/144). The State party should take all measures necessary to protect the rights of human rights defenders to freedom of expression, association and peaceful assembly.**

 D. Dissemination and follow-up

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

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

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

1. \* The present document is being issued without formal editing. [↑](#footnote-ref-2)