



**International Covenant on  
Civil and Political Rights**

Distr.: General  
21 October 2009

Original: English

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**Human Rights Committee**

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

**Third periodic report of States parties**

**Jamaica**

[20 July 2009]

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## **I. Introduction**

1. The Government of Jamaica hereby submits to the Secretary-General of the United Nations, for consideration by the Human Rights Committee, its combined third and fourth periodic reports, in accordance with Article 40 of the International Covenant on Civil and Political Rights.
2. The report complements the previous reports submitted by the Government of Jamaica and has been prepared, taking into account the concluding observations of the Human Rights Committee as well as the general guidelines for the submission of periodic reports provided by the Committee.
3. The report should be considered against the backdrop of several key political developments in Jamaica since the submission in 1997 of its second periodic report (CCPR/C/42/Add.15). Of note is the fact that Jamaica continues its tradition of being a stable multi-party democracy with the successful holding of free and fair elections in 2002 and 2007, respectively.
4. Jamaica also remains committed to the promotion and protection of human rights and the rule of law. The Government has since signed and ratified the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol as well as the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
5. The country, however, continues to grapple with several socioeconomic challenges that have been compounded by the dislocation arising from the global economic crisis. Of particular significance is the increasing incidence of crime and violence. Although the situation is not unique to Jamaica, the issue of violent crime, fuelled by the nexus between the proliferation of small arms and illicit drugs, remains a pressing concern because of the negative impact that it continues to have on all spheres of society. The Government continues to work with national and international partners in an effort to effectively respond to these challenges.
6. For a general overview of the situation in Jamaica, the Committee may consult Jamaica's combined third and fourth periodic reports submitted in accordance with the International Covenant on Economic, Social and Cultural Rights.

## **II. Specific provisions of the Covenant**

### **Article 1**

7. The Committee should note the Government of Jamaica's response in the second periodic report on the International Covenant on Civil and Political Rights (ICCPR) which underscores Jamaica's firm commitment to the principle of self-determination.

### **Article 2**

#### **Paragraph 1**

8. As noted in the second periodic report, the Constitution of Jamaica provides for the enjoyment by all persons of the rights recognized in the Covenant, without distinction of any kind.

9. The right of the individual to protection against discrimination, whether racial or otherwise, is entrenched in the Constitution in section 24. Attention is also drawn to the provisions of sections 13 and 24 of the Constitution.

10. Section 13 states:

“Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

“(a) Life, liberty, security of the person, the enjoyment of property and the protection of the law;

“(b) Freedom of conscience, of expression and of peaceful assembly and association; and

“(c) Respect for his private and family life, the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”

11. Section 24 provides that:

“(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in effect.

“(2) Subject to the provision of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public authority.

“(3) In this section, the expression ‘discriminatory’ means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another description are not subjected or are accorded privileges or advantages which are not accorded to persons of another such description.”

12. Exceptions to the provisions of the subsections are, inter alia:

(a) Persons who are not citizens of Jamaica;

(b) Laws regarding qualification for public service, the police force and the defence force;

(c) Restrictions on the rights and freedoms guaranteed by certain sections of the Constitution, and restrictions authorized by other sections of the Constitution in the interest of such matters as defence, public health and national security; and

(d) Measures taken during a period of public emergency.

13. In recognition of the failure of section 24 (3) of the Constitution to stipulate that laws which discriminate on the basis of sex are prohibited, discussions on a Charter of Fundamental Rights and Freedoms, which is intended to replace Chapter III of the Constitution, remain a priority for the Government of Jamaica. The Charter seeks explicitly to prohibit gender discrimination (further details provided in subsequent paragraphs).

## Paragraph 2

14. Under section 25 of the Constitution, constitutional redress is available for violations of the aforementioned rights. Section 25 provides that:

“(1) Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

“(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

“(3) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.

“(4) Parliament may make provisions, or may authorize the making of provision, with respect to the practice and procedure of any court for the purposes of this section and may confer upon that court such powers, in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.”

## Article 3

15. In Jamaica, no distinction is made between men and women in respect of their enjoyment of the civil and political rights contained in the Covenant.

16. As recommended by the Committee in its concluding observations and recommendations, the Government of Jamaica continues to take steps to promote the rights of women and to eliminate all forms of violence against women and girls. These include:

### *Work of the Bureau of Women's Affairs*

17. There is ongoing public education, training and sensitization to address deeply entrenched stereotypical views regarding issues of power relations and masculinity as it relates to gender-based violence. The Bureau of Women's Affairs has in place an active public education programme, which includes workshops, seminars, public addresses and discussions as well as the dissemination of information through electronic and print media. The target group includes the justice system, schools, churches, other selected groupings and other areas of civil society.

### *Accession to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Para)*

18. The Government of Jamaica, in keeping with its obligations under the Covenant, has continued to focus on the legislative agenda to ensure equality and protection for all groups within the Jamaican society, including women. In this regard, the Government reaffirmed

its commitment to fighting violence against women with its accession in December 2005 to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Para). The Convention defines violence against women to include conduct which results in death or physical, sexual or psychological harm and imposes an obligation on States parties to pursue all appropriate measures to prevent, punish and eradicate such violence. The Convention also outlines the rights to which women are entitled, including the rights to life, liberty and equal protection before the law.

#### *Charter of Fundamental Rights and Freedoms*

19. As noted previously, there is a proposed Charter of Fundamental Rights and Freedoms that is intended to replace Chapter III of the Constitution and that is currently being debated in Parliament. The Charter seeks explicitly to prohibit gender discrimination.

20. Section 13 (3) (i) (i) of the Charter, therefore, provides for the right of freedom from discrimination on the ground of being male or female. While the section does not explicitly state that the definition of discrimination against women covers both direct and indirect discrimination, a proper interpretation of section 13 1 (b) of the Charter suggests that the Charter prohibits all laws which are discriminatory in nature, whether on the basis of sex or whether the law is directly or indirectly discriminatory. Section 13 (1) (b) sets the tone for the interpretation of Chapter III of the Charter by stating that all persons in Jamaica are entitled to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as citizens of a free and democratic society.

#### *Domestic Violence Act, 1996*

21. This Act was introduced to enable men and women who are victims of domestic violence to apply to the court for the grant of protection orders prohibiting the respondent from, among other things, entering or remaining in the household residence of the applicant, from entering any specified area in which the household residence of the applicant is located, or from entering the place of work or education of the applicant. The Domestic Violence (Amendment) Act, 2004 broadened the category of women who may apply for a protection order by amending the definition of spouse to include both married spouses and de facto (common law) spouses.

22. The Act also makes provision for persons in visiting relationships, namely relationships in which the man or woman does not share a common residence with the respondent. An application can also be made by an adult for the protection of a child against acts of domestic violence under the Domestic Violence (Amendment) Act. The definition of a child has been broadened to include a child of the union resident in the household, a child of either spouse resident in the household as well as a child who is not a member of the household, subject to certain criteria.

#### *Amendments to the Offences Against the Person and the Incest (Punishment) Acts*

23. An Offences Against the Person (Amendment) Bill to make amendments to the law relating to rape and other sexual offences, and an Incest (Punishment) (Amendment) Bill to make amendments to the law relating to incest were tabled in Parliament in 1995. Following discussions of the draft bills, Parliament took the opportunity to consider comprehensive changes to the law rather than restrict itself to provisions of the amending bills. Following consideration of case law and developments in other jurisdictions relating to sexual offences, Parliament took the decision that rather than enacting into law the amending bills, a new act, entitled the Sexual Offences Bill, should be enacted.

24. The new Sexual Offences Bill was tabled in Parliament in December 2008. The Bill, when it comes into force, proposes to amend aspects of the Offences Against the Person Act to make new provisions for the prosecution of rape and other sexual offences. It seeks to also repeal the Incest (Punishment) Act by establishing incest offences under the Sexual Offences Act in replacement of those under the Incest (Punishment) Act, and to remove the age limitation on incest, thereby allowing persons under age 16 to be guilty of incest where they willingly have sexual intercourse with a person in a consanguineal relationship.

25. The new Sexual Offences Act proposes to establish the offence of marital rape. It also proposes to abolish the common law presumption that a boy under the age of 14 years is incapable of committing rape. The Act also seeks to change the existing law relating to sexual history evidence, as the assumption on which the law is based — that a woman who has had sexual intercourse outside of marriage is an unreliable and untruthful witness — is now generally regarded as unacceptable.

26. Provisions are included in the Bill to give anonymity to complainants in cases of rape or other sexual offences. The Bill also intends to ensure that discriminatory treatment of evidentiary matters is adequately addressed. Therefore, in proceedings relating to rape or other sexual offences, no evidence is to be adduced and no questions asked in cross-examination relating to the sexual behaviour of the complainant with a person other than the accused, unless leave is requested and the judge deems it fit in the circumstances to grant such leave.

#### *Victim Support Unit*

27. A Victim Support Unit was established in 1998 as a facility for relief for victims of crime. A large proportion of the persons who use the facilities are women affected by violence. The Victim Support Unit offers emotional support to victims through mediation and counselling, crisis intervention, court support, technical services such as advocacy referrals and training of personnel working on victims' issues.

#### *Draft sexual harassment policy*

28. The Government of Jamaica is currently taking steps to put in place a national policy for the enactment of legislation to address sexual harassment in employment as well as in educational and other institutions.

#### *The Victims' Charter*

29. The Government of Jamaica has also developed a Victims' Charter which has been subject to extensive public discussion. The Charter is aimed at strengthening the criminal justice system to ensure that the rights and privileges of victims of crimes, many of whom are women, are protected. The primary object of the Charter is to address the needs of victims of crime rather than focus primarily on the punishment of offenders. The Charter will aim to institute policies, programmes and initiatives which support victims with fair and just treatment throughout criminal justice proceedings. Women who are victims of crime will benefit significantly from the Charter's role in eventually eliminating the risk of secondary victimization of victims.

30. In addition, a draft bill is in place which will allow for amendment of the Evidence Act to permit the taking of testimony of "vulnerable witnesses" by means of live television links. These measures are part of the efforts by the Government to afford greater accommodation and protection to vulnerable witnesses, many of whom are women and children who are often victims of violence and sexual abuse.

31. Other legislative initiatives aimed at achieving equality between genders include:

(a) **The Property (Rights of Spouses) Act, 2004.** The Act makes provision for the division of property on the breakdown of a marriage or a common-law relationship. As a general rule, the Act provides that on breakdown of the relationship, each spouse is entitled to one-half share of the family home. The Act is gender neutral and will benefit women in its practical application, as the deficiencies under the old law which placed women at a disadvantage in respect of entitlement to property have been removed;

(b) **The Maintenance Act, 2005.** This Act imposes an obligation on both spouses to maintain each other during and after a marriage or common-law relationship to the extent that he or she is capable, and to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse;

(c) **The Child Care and Protection Act, 2004.** The Act makes provisions for the promotion of the best interests of the child including his or her mental and physical safety and well-being. The Act criminalizes child abuse and makes provision for mandatory reporting. Pursuant to the Act, the Office of the Children's Advocate (OCA) was established as a Commission of Parliament and became operational in January 2006. One of the core functions of the Office is to represent children in legal matters in instances where their rights have been infringed by Government ministries, departments and agencies. Also established in accordance with the Act is the Office of the Children's Registry which became operational in January 2007 with a mandate to receive reports of child abuse, and neglect as well as reports for child care and protection.

32. It should also be noted that there is a Child Development Agency with statutory responsibility for children who are in need of care and protection, namely those who have been abused, neglected or abandoned, as well as children who are experiencing behavioural problems. For further information on the Child Care and Protection Act, the Committee may wish to review Jamaica's combined third and fourth periodic reports submitted under the International Covenant on Economic, Social and Cultural Rights.

## **Article 4**

### **Paragraph 1**

33. On 19 August 2007, the Governor-General issued a proclamation declaring a state of public emergency in the Island. The proclamation was published in the Official Gazette on 19 August 2007. The state of public emergency was imposed following the passage of Hurricane Dean, an extremely powerful storm which created a threat to public safety, caused severe damage to infrastructure, resulted in loss of life and threatened to deprive a substantial section of the community of supplies and services essential to life.

34. The declaration of the state of public emergency was intended to deal with damage caused by the Hurricane, maintain public order and ensure the delivery and supply of essential goods and services to the population. The state of public emergency was terminated on 24 August 2007. The proclamation issued by the Governor-General advised that there may be derogations from the rights guaranteed by Articles 12, 19 and 21 of the Covenant, was in strict compliance with the provisions of the Covenant, and was limited to the extent required by the exigencies of the situation. The proclamation did not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin and was in strict compliance with sections 26 (4)–(7) of the Constitution which authorizes the declaration of a state of public emergency in specified circumstances.

### **Paragraph 2**

35. There were no derogations from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18.



**Paragraph 3**

36. The United Nations Secretary-General was informed on 23 August 2007 of the proclamation declaring a state of emergency. Jamaica requested the Secretary-General, in his capacity as depositary of the Covenant, to inform all parties of the proclamation and termination of the state of emergency and the reasons for the proclamation.

**Article 5**

37. No comment under this article.

**Article 6**

38. As indicated in the second periodic report, the right to life is protected by section 14 (1) of the Jamaican Constitution which provides that: "No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted."

**Paragraph 2**

39. The following is an update to information provided in Jamaica's second periodic report with respect to the death penalty.

40. Under the Offences Against the Person (Amendment) Act 1992, the Legislature limited the categories of offences that could attract the death penalty. Murders committed in specified circumstances were defined as capital murder and attracted the death penalty. Under section 2 (1) of the Act, the sentence of death was, therefore, imposed for the following categories of murder which were defined as capital murder:

- The murder of any member of the security forces, correctional officer, judicial officer, or any person vested with the same powers as members of the Jamaica Constabulary Force acting in the execution of his duties
- The murder of a witness or juror
- The murder of a justice of the peace acting in the execution of his judicial function
- Any murder committed in the course or furtherance of robbery, burglary, housebreaking, arson in relation to a dwelling house or any sexual offence
- Any murder committed pursuant to an arrangement whereby money or anything of value passes or is intended to pass from one person to another or to a third party at the request or direction of that other person; or is promised by one person to another or to a third person at the request or direction of that person, as consideration for that other person causing or assisting in causing the death of any person or counselling or procuring any person to do any act causing or assisting in causing that death
- Any murder committed by a person in the course or furtherance of any act of terrorism
- Multiple murders

41. All other murders were defined as non-capital and attracted a lesser offence.

42. Under the 1992 amendment, a mandatory death sentence was imposed on persons convicted of capital murder in Jamaica irrespective of the circumstances in which the murder was committed. By virtue of the provisions of the 1992 amendment, a judge,

therefore, had no discretion to take into consideration the circumstances in which a murder was committed.

43. In February 2005, the legislature amended the Offences Against the Person Act to bring it in line with the provisions of section 17 of the Constitution which protects citizens from cruel, inhuman or degrading treatment or punishment. The amendment was also intended to comply with the decision of the Judicial Committee of the Privy Council in *Lambert Watson v. R.*<sup>1</sup> The 2005 Act retains the distinction between capital and non-capital murder but provides that a judge is no longer compelled to impose the death sentence in cases constituting capital murder. Under the 2005 Act, a sentencing hearing must be held in cases constituting capital murder in order to allow the judge to take into account the background and personal circumstances of the person to be sentenced.

44. Under the 2005 Act, before sentencing a person convicted of murder, the court is now obliged to hear submissions, representations and evidence from the prosecution and the defence in relation to the issue of the sentence to be passed. The offender now has the opportunity to persuade the court that the death penalty would be inappropriate or disproportionate. The mandatory death sentence is, therefore, no longer applicable and a judge is required by law to take account of the circumstances in which the murder was committed and to exercise his discretion in applying the appropriate punishment which could involve a lesser sentence such as a sentence of life imprisonment instead of the death penalty. As a result of the amendment, several persons previously sentenced to death were re-sentenced to life imprisonment.

#### **Paragraph 4**

45. The information provided in the second periodic report on the granting of pardons by the Governor-General, as stipulated by section 90 of the Constitution, remains relevant.

#### **Paragraph 5**

46. The Juveniles Act has been repealed and replaced with the Child Care and Protection Act (2004). In section 78 of that Act, the execution of a child is prohibited:

“78 (1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he was under the age of eighteen years, but in the place thereof such person shall be liable to be imprisoned for life.”

47. Section 3 (2) of the Offences Against the Person Act also provides that where a woman convicted of capital murder is pregnant, the sentence to be passed on her shall be the sentence to imprisonment for life or such other term as the court considers appropriate, instead of the sentence of death.

#### **Paragraph 6**

48. On 25 November 2008, Parliament voted by a majority of 34 to 15 to retain the death penalty.

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<sup>1</sup> [2004] UKPC 34.

## Article 7

49. The points raised in the second periodic report remain valid. Specific reference is made to section 17 (1) of the Constitution which states that “No person shall be subjected to torture or to inhuman or degrading punishment or treatment.”

50. Jamaica has always maintained the position that persons are not to be subject to inhuman and degrading treatment and that any punishment is to remain within the confines of the law. As highlighted in Jamaica’s second periodic report, legislation requires that prisoners are not to be treated harshly.

51. In response to paragraph 15 of the concluding observations, it should be pointed out that efforts are currently being undertaken to repeal the Flogging Regulation Act, 1903 and the Crime (prevention of) Act, 1942. A bill to repeal the acts has been drafted and efforts are being made to facilitate its passage as soon as possible.

## Article 8

52. As noted in Jamaica’s second periodic report, slavery and servitude are prohibited in Jamaica.

## Article 9

53. In response to the Committee’s comments in paragraph 17 of its concluding observations, the following should be noted:

- The Government of Jamaica, through the Ministry of Justice, has undertaken a Justice Transformation Programme. As part of this initiative, the Jamaican Justice System Reform Project was established by the Government to undertake a comprehensive review into the state of the state of the justice system and to develop strategies and mechanisms to facilitate its modernization. A modern justice system will be more efficient, accessible, accountable, fair and able to deliver timely results in a cost-effective manner.
- Part of the mandate of the project is to reform the Criminal Justice System. Recommendations have been made for the reform of criminal justice practices, processes and procedures with a focus on reducing delay and increasing effectiveness. Focused backlog reduction strategies, reform of the criminal law, reform of the bail process, proper criminal case management, procedural reform and the creation of national databases containing case information will also be implemented.
- A comprehensive review of the Jamaican Justice System was conducted in October 2006 and July 2007. A series of island-wide consultations were carried out to garner citizens’ views and to identify areas for reform. The outcome of the process have informed the compilation of the Justice System Reform Task Force Report which is now being implemented. Work has commenced or has been finalized with respect to:
  - The establishment of a Justice Modernisation Division within the Ministry of Justice to drive implementation of the modernisation plan
  - The establishment of the Court Management Services entity to facilitate more efficient operations of the Court system
  - The modernization of the Office of the Director of Public Prosecutions

- The implementation of the case management system — Justice Enforcement Management System — to be replicated across all courts
- The development of a policy of Restorative Justice
- The establishment of a Legal Service Division within the Ministry
- Increasing staffing positions in the Supreme Court Registry; and
- Strengthening staffing positions in the Legal Reform Department

## **Article 10**

### **Paragraphs 1 and 2 (a)**

54. The legislation cited in the second periodic report, namely the Prisons Act and the Constabulary Force Act, remains relevant as they address Jamaica's obligations under paragraphs 1 and 2 (a) with respect to the humane treatment of persons deprived of their liberty.

### **Paragraph 2 (b)**

55. As noted previously, the Juveniles Act has been repealed and replaced with the Child Care and Protection Act.

56. Section 66 of the Child Care and Protection Act provides that:

“Arrangements shall be made for preventing a child who is –

“(a) At a police station in connection with the commission of any offence, whether committed by the child or by any other person;

“(b) Being conveyed to or from any criminal court remand centre or place of safety; or

“(c) Waiting before or after attendance in any court,

from associating with any adult, not being a relative, who is charged with any offence other than an offence with which the child is jointly charged.”

57. Section 67 provides that:

“67 (1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a court, the officer or sub-officer of police in charge of the police station to which the person is brought shall act in accordance with subsection (2).

“(2) The Officer or sub-officer shall –

“(a) So inform the government agency responsible for the care and protection of children; and

“(b) Enquire into the case and may, in accordance with the Bail Act, release the person on a recognizance being entered into by the person or his parent or guardian (with or without sureties) for such amount as will, in the opinion of the officer or sub-officer, secure the person's attendance upon the hearing of the charge, and shall so release that person unless –

“(i) The charge is one of murder or other grave crime;

“(ii) It is necessary in the person's interest to remove the person from association with any reputed criminal or prostitute; or

“(iii) The officer or sub-officer has reason to believe that the person’s release would defeat the ends of justice.

“(2) Where a person apparently a child is apprehended and is not released under subsection (2), the agency responsible for the care and protection of children shall cause the person to be detained in a juvenile remand centre until the person can be brought before a court.”

58. Section 68 provides that:

“68 (1) Any court on remanding or committing for trial a child who is not released on bail shall commit that child to custody in a juvenile remand centre named in the commitment, to be detained there for the period for which the child is remanded or until the child is there delivered in due course of law:

“Provided that in the case of a child who has attained the age of fourteen years –

“(a) The court shall not be obligated so to commit that child if the court certifies that the child is of –

“(i) So unruly a character that the child cannot safely be so committed; or

“(ii) So depraved a character that the child is not a fit person to be so detained; and

“(b) Where the court so certifies, the child may be committed to such place, including an adult correctional centre, as may be specified in the commitment warrant.

“(2) Subject to subsection (3), the court which makes an order under subsection (1), committing a child to custody may, on application –

“(a) Vary the order; or

“(b) Revoke the order in respect of a child referred to in the proviso to subsection (1).

“(3) If an application under subsection (2) cannot conveniently be made to the court which made the order for commitment, action under that subsection may be taken by any court having jurisdiction in the place where the sitting of the court which made the order was held.

“(4) If the order is revoked, the child may be committed to such place, including an adult correctional centre, as may be specified in the commitment warrant.”

### **Paragraph 3**

#### *Prison facilities*

59. In respect of the Committee’s concerns relating to the condition of prison facilities, it should be noted that plans to build a new 5,000-bed adult correctional facility have been initiated. Efforts are also being made to improve the living conditions of inmates in all institutions. An extensive repair and an ongoing maintenance programme which includes the retrofitting of cells and sanitary convenience is in place.

#### *Diet*

60. A Director of Medical Services has been employed to ensure health-related matters are addressed. The Director, in collaboration with a dietician, monitors the quality and conditions of meal preparation to ensure compliance with minimum standards.

*Training of prison staff*

61. An extensive training programme has been implemented which includes the following courses: (a) basic grade — a 22-week programme for new entrants; (b) in-service training — an ongoing two-week course for all ranks; (c) upgrading for all ranks of prison officers; (d) specialized training for all officers in juvenile institutions. Areas of training include systematic search procedures, control and restraint, crowd management, riot drills and risk assessment.

*Facilities for visits*

62. All institutions have waiting areas for family members visiting inmates. A new visitor's lodge is being constructed at the Tower Street Adult Correctional Centre. All institutions have an area designated for the meeting of inmates with their legal representatives.

*Treatment of inmates*

63. Closer monitoring of inmate-staff relationships has resulted in disciplinary action being taken against officers as a result of investigations by the Inspectorate Unit of the Department of Correctional Services, which was established in 2007. Consequently, there has been a reduction in the number of incidents of abuse as well as of conflicts between staff and inmates.

64. There are several avenues of redress for inmates who have been abused or mistreated. In each institution, complaints by inmates are logged and dealt with by the superintendent in charge. However, if immediate attention is required, the matter is treated as priority and the inmate is seen by the superintendent. If the inmate believes that the matter warrants attention external to the institution, he/she may write to the Commissioner through the Superintendent. Other channels include the Chaplaincy Services, Inmate Welfare Coordinator (Rehabilitation Unit) and the Board of Visitors.

*Independent inspectorate*

65. Currently all adult institutions have a Board of Visitors mandated to visit institutions, interview inmates, carry out inspections and report findings to the Minister as provided for by the Corrections Act.

66. The above-stated measures complement other ongoing efforts to improve the conditions of Jamaica's correctional facilities. These measures are consistent with Jamaica's obligations under Article 10 of the Covenant.

**Article 11**

67. The provisions outlined in the second periodic report remain relevant as the laws of Jamaica do not allow for a person to be imprisoned merely on the ground of an inability to fulfil a contractual obligation.

**Article 12**

68. The information provided in the second periodic report remains relevant, except that the reference to the Criminal Justice (Administration) (Amendment) Act, 1994 should be replaced with the Criminal Justice (Administration) Act.

## Article 13

69. The information provided in the second periodic report on the expulsion of an alien lawfully in the territory remains relevant.

## Article 14

### Paragraph 3 (d)

70. Further to the information provided in the second periodic report and by way of responding to paragraph 14 of the Committee's concluding observations on the system of legal aid, the following should be noted:

(a) The Government passed the Legal Aid Act in 1997. The Act establishes the Legal Aid Council which is responsible for administering and supervising legal aid in Jamaica. The Council is administered by a Board composed of the Chief Justice, the Director of Public Prosecutions, the Solicitor General, the Permanent Secretary of the Ministry of Justice, or a nominee of each of them. Also included on the Board is a representative of the Jamaican Bar Association, the Advocates Association of Jamaica, the Council of Legal Education, the General Legal Council of the Bar, a member of the Jamaica Defence Force and the Council of Churches; each of these selected by the Minister from a panel of three (3), nominated by these bodies;

(b) Under the Legal Aid Scheme, every citizen of Jamaica who is detained or charged is entitled to Duty Counsel, regardless of the offence he is charged with or the suspected offence. Duty Counsel is provided where persons are being held at a police station, lock-up, correctional institution or any other place where he/she is being held or detained before a court appearance. Counsel gives legal advice to the detained person; attends identification parades, if such parades are being held; is present at the taking of a cautioned statement, if one is to be taken, or at a questioning by the police, whether the questioning will be recorded by the police or not; makes representation for bail at the lockup; and represents the accused as counsel on his first appearance in court. Currently, the Council has implemented a "Weekend Duty Counsel Programme" to strengthen access and increase the use of the Legal Aid System. Four Corporate Area police stations and one station in Portmore are now piloting the programme;

(c) Secondly, the Council provides legal aid in the Resident Magistrates' Courts, Circuit Courts, Gun Courts and the Appeal Court. When an application is made and granted by the appropriate authority, the Council provides attorneys who conduct the defence on behalf of the accused. The fees paid for these services vary depending on the seniority of Counsel, the offence and the court before which the accused is tried;

(d) There are over three hundred (300) attorneys on the Legal Aid Council's panel of lawyers. Eighty-five (85) of them are senior counsels having more than ten (10) years' experience in the practice of law. This has significantly increased public confidence in the system;

(e) In criminal trials, every criminal offence qualifies for legal aid, except certain offences under the Money Laundering and Dangerous Drugs Acts. Petty Session offences are not granted legal aid. In capital murder cases and firearms cases, the defendant is represented by senior counsel with the requisite experience in, for instance, DNA, ballistics and forensics. Additionally, a junior counsel may also be assigned to assist senior counsel. The Council has, among its records, Call Certificates confirming whether an attorney is senior or junior counsel, to assist in ensuring that cases are matched with the level of expertise required in any given case;

(f) Outreach programmes targeting law enforcement officers and the general public ensure that all parties are aware of the availability of legal aid. The highest fee allotment under the legal aid schedule of fees is made to senior counsel in capital murder cases in order to ensure that they are adequately remunerated. Notwithstanding, the current fee structure is under review with a view to keeping rates paid to legal aid counsel competitive. The Legal Aid Act requires this ongoing review in consultation with members of the private bar through the Advocates Association of Jamaica and the Jamaica Bar Association;

(g) In order to maintain the quality of legal aid representation, the State has ensured that through public sensitization and the vigilance of judges, magistrates and the accused, sub-standard legal services are identified. The General Legal Council and the Bar Association are empowered to have attorneys who are guilty of professional misconduct struck off the roll;

(h) The General Council also conducts seminars to inform persons of its functions and their rights under the Legal Aid Act. Additionally, the Ministry of Justice proposes to strengthen the existing legal aid clinics in Kingston and Montego Bay by enhancing the availability of attorneys willing to provide legal aid services on a pro bono basis. The Director of the Norman Manley Law School, University of the West Indies, will also be engaged with a view to strengthening and enlarging its compulsory legal aid clinic outreach activities beyond the confines of its immediate surroundings and into the wider Kingston Metropolitan Area;

(i) The Ministry of Justice will also seek to provide greater access to legal aid services through the provision of the services of a mobile legal aid clinic. The mobile clinic is expected to assist in informing the Council of the areas of greatest needs. The clinic is expected to work closely with justice system planners to ensure that its services are focused on supporting the proposed Community Justice Tribunals (Forums), which will be administered by justices of the peace, as well as 10 proposed peace and justice centres which are recommended for establishment in several volatile communities.

#### **Paragraph 4**

71. The system of juvenile justice in Jamaica is aimed at ensuring the promotion and rehabilitation of children in conflict with the law. The legislative provisions concerning juveniles are contained in the Child Care and Protection Act. Under section 63 of the Act, no child under the age of 12 years shall be conclusively presumed to be guilty of an offence. The Act provides specifically for the court to ensure that a child's rehabilitation is promoted.

72. Section 65 of the Act, therefore, provides that:

“Every court, in dealing with a child that is brought before it either as being in need of care and protection or as an offender or otherwise, shall have regard to the best interests of the child and shall, if it deems necessary, take steps for removing the child from undesirable surroundings and for securing that proper provision is made for the child's education and training.”

73. Pursuant to section 69 of the Act, the parents of a child who is charged with an offence may be required to attend the proceedings at which the case is heard, unless it would be unreasonable to do so.

74. Children, like adults, charged with an offence are protected by section 20 (6) of the Constitution which provides, inter alia, that:

“Every person who is charged with a criminal offence shall be informed as soon as reasonably practicable, in a language which he understands, of the nature of the



offence charged; shall be given adequate time and facilities for the preparation of his defence; shall be permitted to defend himself ... by a legal representative of his choice; shall be permitted facilities to examine ... by his legal representatives the witnesses called by the prosecution before any court and to obtain the attendance of witnesses ... and carry out the examination of such witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and shall be permitted to have without payment the assistance of an interpreter if he cannot understand the English language.”

75. Section 71 (8) of the Child Care and Protection Act also ensures further specialized protection by providing that:

“Where a child is brought before a Children’s Court, it shall be the duty of such court to explain to the child in as simple language as possible –

“(a) The reason for the child being before the court; and

“(b) That the child is entitled to the assistance of the Children’s Advocate.”

76. Further, under section 71 (9), where a child is charged before a Children’s Court with any offence and does not have legal representation, the Court shall act in accordance with section 4 (3) of the Act which requires the court to refer the case to the Children’s Advocate or, if it thinks fit, grant a legal aid certificate. The Court may also, if it thinks fit, adjourn the proceedings until such time as the court considers sufficient to allow for the Children’s Advocate to consider the case or the necessary arrangements to be made for the child to obtain legal representation as specified in the legal aid certificate. The legal aid certificate, granted pursuant to the Legal Aid Act, entitles the child to counsel who are required to provide legal advice and assistance before and during court proceedings.

77. Under the Child Care and Protection Act, where a child is found guilty of an offence, a Children’s Court may make an order dismissing the case, or for probation under the Probation of Offenders Act, placing the child under the supervision of a Probation and After Care Officer or some other person selected by the Minister. The Court may also commit the child to the care of any fit person, who is either a relative or not, and who is willing to undertake the care of the child. The Court is also empowered to send the child to a juvenile correctional centre with the consent of his parents (section 76, Child Care and Protection Act). Under the aforementioned Act, a court may not order a child under the age of 12 years to be sent to a juvenile correctional centre unless the child cannot suitably be dealt with otherwise (section 79).

78. Section 78 of the Act restricts the categories of punishment that may be ordered in respect of a child by providing that:

Section 78 (1) “Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in place thereof such person shall be liable to be imprisoned for life.”

79. Section 78 (4) also provides that “A child shall not be sentenced to imprisonment, whether with or without hard labour, for any offence, or be committed to an adult correctional centre in default of payment of any fine, damage or costs.”

80. There are specialized courts known as Children’s Courts which have jurisdiction to hear matters related to children in need of care and protection and children brought before the court as offenders (section 71 of the Child Care and Protection Act).

### Article 15

81. The information provided in the second periodic report concerning, inter alia, the provisions in section 20 (7) of the Jamaican Constitution remains pertinent in responding to the provisions of this article concerning the commission of a criminal offence.

### Article 16

82. As stated in the second periodic report, everyone has the right to recognition as a person before the law.

### Article 17

83. In relation to the issue raised by the Committee in its concluding observations concerning Jamaica's second periodic report in respect of wire-tapping and any interception of communication, the Committee should note that in 2002 the Government of Jamaica passed an Interception of Communications Act. Section 3 provides that:

“(1) Except as provided in this section, a person who intentionally intercepts a communication in the course of its transmission by means of a telecommunications network commits an offence and is liable upon summary conviction in a Resident Magistrate's Court to imprisonment for a term not exceeding three years or to fine not exceeding three million dollars or to both such fine and imprisonment.

“(2) A person does not commit an offence under this section if –

“(i) the communication is intercepted in obedience to a warrant issued by a Judge under section 4;

“(ii) he has reasonable grounds for believing that the person to whom or by whom the communication is transmitted consents to the interception;

“(iii) the communication is intercepted as an ordinary incident to the provision of telecommunications services or to the enforcement of any enactment relating to the use of those services;

“(iv) the communication is not a private communication;

“(v) the communication is a stored communication and is acquired in accordance with the provisions of any other law; or

“(vi) the interception is of a communication transmitted by a network that is not a public telecommunications network and is done by a person who has –

“... ”

“(i) a right to control the operation or use of the network; or

“(j) the express or implied consent of a person referred to in sub-paragraph (i).”

84. Section 4 provides that:

“4 (1) Subject to the provisions of this section, an authorized officer may apply ex-parte to a Judge in Chambers for a warrant authorizing the person named in the warrant –

“(a) To intercept, in the course of their transmission by means of public or private telecommunications network, such communications as are described in the warrant;

“(b) To disclose the intercepted communication to such persons and in such manner as may be specified in the warrant.

“(2) A judge shall not issue a warrant under this section unless he is satisfied that—

“(a) The warrant is necessary –

“(i) In the interests of national security; or

“(ii) For the prevention or detection of any offence specified in the Schedule, where there are reasonable grounds for believing that such an offence has been, is being or is about to be committed;

“(b) Information obtained from the interception is likely to assist in investigations concerning any matter mentioned in paragraph (a);

“(c) Other investigative procedures –

“(i) Have not been or are unlikely to be successful in attaining the information sought to be acquired by means of the warrant;

“(ii) Are too dangerous to adopt in the circumstances; or

“(iii) Having regard to the urgency of the case are impracticable; and

“(d) It would be in the best interest of the administration of justice to issue the warrant.”

85. Other safeguards provided for in the Act include the confidentiality of intercepted communications which aim to protect the rights of citizens.

## **Article 18**

86. Issues regarding freedom of conscience, thought and religion which are addressed under this article are covered in section 21 (1) and (6) of the Jamaican Constitution. The details provided in the second periodic report, therefore, remain relevant.

## **Article 19**

87. The freedom to hold opinions without interference is guaranteed by section 22 of the Constitution. The provisions outlined in the second periodic report still stand.

## **Article 20**

88. The provisions outlined in the previous report with respect to the Treason Felony Act and the Seditious Meetings Act remain relevant in explaining the provisions made under Jamaican law to prohibit any propaganda for war as well as any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

## **Article 21**

89. As described in the second periodic report, the right to peaceful assembly is provided in section 23 of the Constitution. The details outlined in that report remain valid.

## Article 22

90. The right to join a trade union is provided for in section 23 of the Constitution as well as the Labour Relations and Industrial Disputes Act (“the LRIDA”). For further details, the Human Rights Committee may refer to Jamaica’s combined third and fourth periodic report submitted to the Committee on Economic, Social and Cultural Rights, in accordance with the International Covenant on Economic, Social and Cultural Rights.

## Article 23

91. The principle of the family as the natural and fundamental group unit of society is recognized by the laws of Jamaica. Specific provision is also made under the laws of Jamaica concerning the right to marry. In addition to the information provided in the second periodic report for further details on measures taken by the Government in keeping with its obligations under this article, the Committee may refer to Jamaica’s third and fourth periodic report submitted to the Committee on Economic, Social and Cultural Rights, in accordance with the International Covenant on Economic, Social and Cultural Rights.

## Article 24

### Paragraph 2

92. In addition to the information provided in Jamaica’s second periodic report, the Committee should note that in January 2007, the Government embarked on a programme to implement compulsory child registration. As part of the programme, all children born as of 1 January 2007 and registered with a name are given one free copy of their birth certificate. The Registrar General’s Department (RGD), which has responsibility for the registration of births, embarked on an intensive public education campaign for all parties involved such as hospitals, mothers, parish officers, the media and the private sector.

93. As part of the programme:

- An RGD Registration Officer is assigned to all hospitals and birth centres island-wide for seven days each week. He/she visits admissions 2—3 times daily to obtain the names and contact information of mothers
- After the child is born and before the mother is discharged, the Registration Officer completes the registration by including gender, date, name of child and father’s information (if present at the time of registration or if the mother is married)
- If the child is born at home, the parent is required to visit the local district registrar in the district where the birth occurred to have the birth registered
- The child must be named within six weeks of birth in order to be issued with a free birth certificate
- The free first certificate is delivered within three months of registration

94. Children who are not named within one year of birth may be named at the RGD through a process known as “Late Entry of Name”. The RGD has also initiated a “Name the Child Project” to register thousands of “nameless” children who were born between September 2004 and December 2006.

### Paragraph 3

95. The following sections of the Constitution are applicable:

“3B (1) Every person born in Jamaica shall become a citizen of Jamaica –

“(a) On the sixth day of August, 1962 in the case of a person born before that date;

“(b) On the date of his birth, in the case of a person born on or after the sixth day of August, 1962.

“(3) A person shall not become a citizen of Jamaica by virtue of this section if at the time of his birth –

“(a) His father or mother possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Her Majesty in right of her government in Jamaica and neither of his parents is a citizen of Jamaica; or

“(b) His father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.

“3C Every person born outside Jamaica shall become a citizen of Jamaica –

“(a) On the sixth day of August, 1962, in the case of a person born before that date; or

“(b) On the date of his birth, in the case of a person born on or after the sixth day of August, 1962;

“(c) If at that date his father or mother is a citizen of Jamaica by birth, descent or registration by virtue of marriage to a citizen of Jamaica.”

96. The effect of these sections is to grant Jamaican nationality to every child born in Jamaica, unless the parents are foreign diplomats or enemy aliens. Also, any child born outside of Jamaica is entitled to Jamaican citizenship if his mother or father or both parents are Jamaicans.

### **Article 25**

97. The information provided in Jamaica’s second periodic report on the right of every citizen to take part in public affairs directly or through freely chosen representatives remains relevant.

### **Article 26**

98. The principle of “equality before the law” is one which is recognized in Jamaica. As noted previously, section 24 of the Constitution provides for protection against discrimination on the grounds of race, place of origin, political opinions, colour or creed.

### **Article 27**

99. Section 21 (1) of the Constitution, as outlined in the second periodic report, provides for the freedom to practice one’s religion.

## **III. General comment**

100. In response to paragraph 16 of the Committee’s concluding observations, it should be noted that the Police Public Information Policy was established on 1 April 1990. The

Policy contains procedures for the release of information to the media. The provisions of the Policy are applicable to all official information of the Jamaica Constabulary Force, including but not limited to data, records, complaints and cases investigated by the Police. Under the Policy, officials of the Constabulary Force are required to cooperate with the media in facilitating the provision of information to the public.

101. With respect to the Tivoli Gardens incident, it should be noted that the matter was appropriately investigated. The relevant evidence was submitted to the Director of Public Prosecutions who ruled that three constables should be charged with murder. In December 1997, the case was tried in the St Thomas Circuit Court and the officers acquitted of the charge. The trial was a highly publicized matter in both the print and electronic media.

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