



**International Covenant on  
Civil and Political Rights**

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Human Rights Committee

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

**Jamaica\***

Addendum

**Replies from the Government of Jamaica to the list of issues  
(CCPR/C/JAM/Q/3) to be taken up in connection with the  
consideration of the third periodic report of Jamaica (CCPR/C/JAM/3)**

[16 May 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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

### **Question 1**

1. Most of the provisions of the International Covenant on Civil and Political Rights (ICCPR) are contained in the Constitution and various pieces of domestic legislation. They are, therefore, enforceable and can be invoked before domestic courts where there is a claim of a constitutional violation or a breach of rights under the legislation in question. Provisions of the Covenant, however, cannot be directly invoked before domestic courts.

2. The Charter of Fundamental Rights and Freedoms, which will replace Chapter III of the Jamaican Constitution, has been adopted by Parliament. Its enactment into law will be complete when it is published in the official gazette.

3. In respect of the Covenant rights that are guaranteed in the Charter, the following should be noted:

(a) The Charter aims to guarantee to “all persons in Jamaica the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons”. It further aims to guarantee, among other rights, the right to life, liberty, and security of the person; freedom of thought, conscience, belief and observance of political doctrines; the right to freedom of expression; to seek, receive, distribute or disseminate information, opinions and ideas; the right to freedom of peaceful assembly and association; the right to freedom of movement; the right to equality before the law; the right to freedom from discrimination; the right to freedom of religion; and the right to protection of private and family life.

(b) The Charter aims to provide the right to freedom from discrimination on the ground of being male or female or on the ground of race, place of origin, social class, colour, religion or political opinions.

### **Question 2**

4. As stated in the Third Periodic Report, Section 25 of Chapter III of the Constitution provides the right for constitutional redress where the rights, which are analogous to the rights in the Covenant, are violated. Any person alleging an infringement of such rights may apply to the Supreme Court for redress. Defendants have the right to submit an appeal to the Court of Appeal if they are aggrieved by any determination of the Supreme Court.

5. The Government of Jamaica does not intend to re-accede to the Optional Protocol to the Covenant.

### **Question 3**

6. There is no national institution in Jamaica responsible for supervising the implementation of human rights in the State. Several entities have, however, been established whose responsibilities significantly provide for and enhance the promotion and protection of human rights. These include the Office of the Public Defender, the Independent Commission of Investigations (INDECOM), the Child Development Agency (CDA), the Office of the Children’s Advocate (OCA) and the Bureau of Women’s Affairs (BWA).

7. The Office of the Public Defender is an independent commission of Parliament established under the Public Defender (Interim) Act. It has the mandate to investigate any action where the Public Defender is of the opinion that an individual has sustained injustice

or suffered an infringement of his constitutional rights as a result of action taken by an agent of the State.

8. The INDECOM, which was established under the Independent Commission of Investigations Act, is a commission of Parliament. It investigates actions by members of the security forces and other agents of the State that result in death or injury to persons or the abuse of the rights of persons.

9. As indicated in the Third Periodic Report, the CDA and OCA were established pursuant to the Child Care and Protection Act, 2004. The CDA is mandated to develop comprehensive strategies for the implementation, coordination and regulation of national policies and programmes that promote the rights, welfare and well-being of all children. The Agency also ensures that Jamaica fulfils its international obligations as it relates to issues dealing with children. The OCA operates as an independent body with responsibility to assess and take action where State agencies, including the CDA, fail to discharge their duties in the best interest of the child.

10. The Bureau of Women's Affairs (BWA) is charged with the responsibility of ensuring that women are empowered to achieve their full potential as individuals and contributors to national development. The Government has launched the National Policy on Gender Equality, in which the BWA played a central role, and is in the process of establishing a National Gender Advisory Commission. The Bureau continues to advocate for the mainstreaming of gender in all government policies, plans and programmes as well as keeps under constant review legislation and policy initiatives that are designed to eliminate all forms of gender discrimination.

11. Jamaica supports the provisions of United Nations General Assembly resolution 48/134 on the Paris Principles. While there is no initiative at this time to establish a national institution, the matter will be kept under consideration.

12. Non-discrimination, equality between men and women (Art. 2(1), 3 & 26)

#### **Question 4**

13. Section 13 of the Constitution provides that every person in Jamaica is entitled to the fundamental rights and freedoms of the individual and has those rights whatever his or her race, place of origin, political opinions, colour, creed or sex. Aside from the Constitution, examples of some of the domestic legislation relating to non-discrimination include the Employment (Equal Pay for Men and Women) Act which seeks to ensure that women are not discriminated against in the work place; the Maternity Leave Act that makes it obligatory for employers to grant to a woman leave with pay for a period of 28 weeks; the Maintenance (Law) Act which provides protection to a common-law spouse; and the Protection (Rights of Spouses) Act which makes provision for the division of property on the breakdown of a marriage or a common-law relationship.

#### **Question 5**

14. The population of Jamaica at the end of 2009 was estimated at 2,698,800 with an annual growth rate of 0.2 per cent. Of this number, 1,329,300 or 49.3 per cent are males while 1,369,500 or 50.7 per cent are females.<sup>1</sup> A population census will begin in April 2011.

15. Jamaican women have excelled in all aspects of national life. Women are free to participate in the political, economic and social life of the country and have made

<sup>1</sup> Economic and Social Survey of Jamaica, 2009

significant contributions to national development. They have done so through their active participation in the public and private sectors, culture, sports, education, health, agriculture, labour and general community development. Challenges still persist in respect of discrimination, exploitation and stereotyping against women but the Government continues to implement measures to combat such action.

16. The National Policy for Gender Equality was officially launched on 8 March 2011 – International Women’s Day. It is expected to more definitively mainstream gender in public policies, programmes and plans as well as create more opportunities for redress regarding offences committed against women and girls. It includes gender and human rights targets to be achieved and gender indicators to monitor the targets.

17. In the political arena, the most notable achievement for women was the appointment in 2006 of the first female Prime Minister who served for almost two years. She currently heads the Parliamentary Opposition.

18. The 30 per cent quota system recommended by the Beijing Declaration and Platform for Action still remains a challenge, based on the inadequate number of women who choose to enter representational politics. Of the sixty (60) seats contested in Jamaica in the last General Election in 2007, twenty-one (21) were contested by women who accounted for only 35 per cent of those running for political office. Only eight (8) women won their seats with 3 of them being first time Members of Parliament. Of the 21 members of the Senate, 5 are women. Currently, therefore, women account for only 13.3 per cent of the House of Representatives and 14.3 per cent of the total number of Senators.

19. Women currently have portfolio responsibility for the Ministry of Justice and Attorney General, as well as the Ministry of Youth, Sports and Culture which also has responsibility for Gender issues. A female is the Minister of State in the Ministry of Foreign Affairs and Foreign Trade. Since the submission of Jamaica’s Second Periodic Report in 1997, women have had ministerial responsibilities for issues such as labour, social security, education, tourism, local government and community development. Jamaica remains committed to removing obstacles to the greater participation by women in the political arena.

20. Women occupy influential positions in the public sector and the judiciary. The Deputy Speaker of the House of Representative, the Leader of Government business in the Senate as well as the Clerk and Deputy Clerk to the Houses of Parliament are women. A significant number of females are employed in the judicial system. The first female Chief Justice as well as Director of Public Prosecutions were appointed in 2007 and 2008, respectively. Of a total of fifty-one (51) Resident Magistrates, forty (40) are women and both Masters-in-Chambers are women. All nine (9) Registrars are women. In the Supreme Court the female/male ratio is for the most part balanced with thirteen (13) female judges compared to fifteen (15) male judges. However, at the appellate level there are now (2) female judges of appeal of a total of seven (7) judges.

21. The posts of Auditor General, Administrator General, Chief Medical Officer, Accountant General and Chief Personnel Officer are occupied by women. More than half the number of Permanent Secretaries (8 of 15) – the head of respective Government Ministries - is female. One of the Deputy Governors of the Bank of Jamaica is female and women currently head such major government entities as the Jamaica Trade and Invest (JTI) Agency and the Urban Development Corporation.

22. In the diplomatic service, women far outnumber men. Of the total staff complement (including non-diplomatic staff), approximately 77 per cent are women. Of the total of 41

senior positions in the Foreign Service, 24 women serve at the executive management levels, i.e. Under- Secretaries, Ambassadors/High Commissioners, Consuls General, Directors, and Heads of Units in the Ministry of Foreign Affairs and Foreign Trade<sup>2</sup>. Of the 19 Jamaican Overseas Missions (Embassies, High Commissions and Consulates General), 10 are headed by women, resulting in 53 per cent of Jamaica's Heads of Mission being female.

23. Women are not only greater recipients of health services, they also dominate the health field as workers. Almost 80 per cent of the public health work force is female. They serve in several capacities as doctors, including as specialists, nurses, public health inspectors, national programme directors, community health aides and orderlies. The Chief Medical Officer and the Permanent Secretary in the Ministry of Health are females and this has been the trend for many years<sup>3</sup>.

24. Women are also very involved in the field of education as evidenced by the fact that female teachers dominate the public education system. At the primary level, women account for 84.9 per cent of the total number of teachers while at the secondary level, women account for 69.9 per cent of the total number.

25. While women are fairly well-represented in the public sector, in the private sector women tend not to be as prominent as their male counterparts at the managerial or senior level. A study conducted in 2008 on women's participation on Boards and Commissions indicated that only 16 per cent of places on boards of publicly listed companies in the sample were occupied by women. In terms of membership, women occupied only 14 per cent. There were, however, a higher percentage of men (64.1) than women (42.3) who reported serving on multiple boards.<sup>4</sup> One of the major banks in Jamaica (RBTT) is headed by a woman. Women also feature prominently at the senior level in the banking industry.

26. Almost 65 per cent of the female Board members were employed with the Government, compared with 42.8 per cent of the male members.<sup>5</sup> This may be reflective of instances where persons who occupy certain public sector positions, many of which are women, are required to sit on prescribed Boards which fall within their respective portfolios.

27. The BWA is seeking to address this under-representation by targeting female students at the secondary level through public education, sensitization and training to stimulate their interest in participating in these areas.

28. There is no legal discrimination against women as they have the right to make contracts relating to credit, real estate and other property, as well as other commercial transactions. Women have the autonomy to manage their personal affairs, regardless of their marital status. With respect to equal treatment, the laws concerning rights to property and maintenance such as the Property (Rights of Spouses) Act and the Maintenance Act, respectively, are not gender specific. They confer equal obligations on women and men in legal and common law unions as well as persons in visiting relationships.

29. The Government of Jamaica continues to ensure that legislation related to marriage and family life is not discriminatory to women and guarantees equality of rights and responsibilities between women and men.

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<sup>2</sup> Source: Ministry of Foreign Affairs and Foreign Trade

<sup>3</sup> Ministry of Health -Annual Reports

<sup>4</sup> Watson Williams, Carol (2008) - Gender and Governance: Implications for the participation of Women on Boards and Commissions in Jamaica

<sup>5</sup> Ibid

30. Women are also involved in the economic life of the country and are the proprietors of several small business entities. Of the 3,775 loans disbursed in 2008 across five lending agencies, females accounted for 76.1 per cent of the recipients<sup>6</sup>.

31. According to the Statistical Institute of Jamaica (STATIN), females represent 20 per cent of the agricultural work force with 7 per cent of the female labour force being skilled agricultural and fishery workers. Statistics from the Report of the Census of Agriculture 2007<sup>7</sup>, reveal that there are 63,690 female farmers<sup>8</sup> in Jamaica, approximately 30 per cent of farmers. Of that sum, 43 per cent of the female farmers are younger than 44.

32. Females make up the greater portion of the population that are poor, especially for the 10 – 19 and 30-49 age groups, with 69.5 per cent of females in matriarchal households being below the age of 60.

33. The employed labour force in 2009 declined by 3.1 per cent to 1,126,100 with women being disproportionately affected.<sup>9</sup> Employment rates have fluctuated in the aftermath of the global economic and financial crisis. A major factor in the reduction of female employment was the decrease in employment opportunities in the wholesale and retail, repair of motor vehicles, cycles, personal and Household Goods sub-industry.<sup>10</sup> Historically, however, employment has been higher among males than females.

34. There are several Government initiatives aimed at advancing the empowerment of women, including through training and employment opportunities. Special attention is being given to supporting businesses led and dominated by women in micro-economic enterprises through the strengthening and enhancement of skills in management, marketing, finance, product development, e-commerce and customer service.

35. There are legislative measures in place to ensure that women are not discriminated against in the work place. The objective of the Employment (Equal Pay for Men and Women) Act (EPMWA), for example, is to ensure that "...no employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by him in the same establishment in Jamaica." Section 9 of the Act gives designated officers of the Ministry of Labour and Social Security the power to enter and inspect the premises of any employer who has both men and women in his employment. Section 6 of the Act prevents an employee from contracting out of his/her rights as provided for by the legislation. The Act prescribes penalties for contravention. For the period January to March 2009 alone, over a thousand (1,000) visits were conducted without any incidence of discrimination identified.

36. There is no overt discrimination in pay for equal work done by women and men. Studies conducted by the University of the West Indies, however, show that women on average earn 91.4 cents to every dollar earned by men. In the public sector, by law, men and women earn equal pay for work of equal value.

37. The Ministry of Labour and Social Security has reported that organizations are now moving towards performance based incentive programmes where workers are assessed

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<sup>6</sup> Source: Bureau of Women's Affairs

<sup>7</sup> The 2007 Census of Agriculture in Jamaica is a large scale, periodic, statistical operation conducted as part of the United Nations Food and Agriculture (FAO) world programme for the 2010 round of censuses, covering the period 2005 – 2014. The last census was conducted in 1996.

<sup>8</sup> The words farmer, holder and farm operator are used interchangeably and they are defined as the person who exercises management control over the agricultural holding operation and takes major decisions regarding the use of resources.

<sup>9</sup> Economic and Social Survey of Jamaica 2009

<sup>10</sup> Ibid

according to outputs that are predetermined and driven by objective factors to keep the organization profitable. This type of programme is geared towards ensuring that pay disparity based on sex will be eliminated.

38. Adult literacy in Jamaica in 2007 stood at 86 per cent. Women have a higher literacy rate than men (91.1 per cent to 80.5 per cent in 2007) and girls outperform boys at every level of the education system<sup>11</sup>. At present, approximately 12,000 persons are enrolled in literacy programmes across Jamaica. Of this number, approximately 35 per cent are females. It should be noted that there is no barrier to or discrimination against women enrolling in any programme of their choice.

39. At the primary level, which relates to children aged 6 to 11, enrolment rates have been consistently high, growing from 95.9 per cent in 2004/05 to full enrollment in 2009. In the public school system, males account for 51.1 per cent of the student population. Public primary education in Jamaica is free and is mandated by law. Jamaica has achieved the targeted goal of universal primary education which is goal 2 of the Millennium Development Goals (MDGs).

40. Assessment at the primary level is measured through the Grade Four Literacy and Numeracy Tests. In June 2009, approximately 46,643 students sat the literacy component and 46,588 students sat the numeracy component<sup>12</sup>. In terms of overall mastery, data disaggregated by gender showed that girls outperformed boys with 81.3 per cent achieving mastery compared to 59.1 per cent for boys for the literacy tests, and 54.7 per cent of girls achieving mastery compared with 36.3 per cent for boys in the numeracy test.

41. The Grade Six Achievement Test (GSAT) facilitates the placement and continued development of students from the primary to secondary level. In 2009, a total of 49648 students sat the examination. The mean practicing scores were: Mathematics 53.0; Language Arts 57.0; Social Studies 53.0; Science 53.0 and Composition 58.3. Consistent with previous years, girls outperformed boys in all subjects<sup>13</sup>.

42. At the secondary level in 2009, for children in grades 7 – 11 (ages 12 – 16), a greater number of boys were enrolled as males accounted for 50.4 per cent of student enrolment while females accounted for 49.6 per cent. In 2007, tuition fees at the secondary level were abolished in an effort to ensure that all Jamaican children can access public secondary education. The Government has made a policy commitment to ensure universal access for all secondary level students by 2016. The Government has also taken a policy decision to retain students at the secondary level until the age of 18.

43. Post-secondary education is offered by Community Colleges, the National Training Agency (HEART Trust/NTA), Academies and Vocational Training Centres as well as Community-based and other Special Programmes. These institutions provide training to skilled and semi-skilled workers. Based on data compiled by the different institutions in 2009, some 60,623 persons, of which 55.3 per cent were female, were trained in post secondary institutions.<sup>14</sup> Most persons received training as cooks, waiters and other hotel personnel; craftsmen, production process and operating personnel; and as secretarial and other commercial personnel. Persons trained in computing accounted for an additional 15.7 per cent. These skill sets were in high demand, corresponding with the pattern of growth in

<sup>11</sup> National Report of Jamaica for the 2009 Annual Ministerial Review of the UN Economic and Social Council on Progress Towards the Achievement of the Internationally Agreed Development Goals, including the MDGs.

<sup>12</sup> Economic and Social Survey, 2009

<sup>13</sup> Ibid

<sup>14</sup> Ibid

the hospitality and ICT industries. Examples of those categories which women dominated include: cooks, waiters and other hotel personnel; secretarial and other commercial personnel; and computing.

44. Tertiary level education is available for the development of the skills of professionals, senior officials and technicians for the labour market. Such programmes are offered at the various public and private Universities, teacher training institutions, nursing institutions as well as Community Colleges. Enrolment at the tertiary level was estimated at 64,034 students, 68.1 per cent of which were females.<sup>15</sup> Available data for 2009 also indicate that the output of tertiary institutions totaled 14,151, with females accounting for 71.7 per cent. Data for 2006/2007 suggest that women are ahead of their male counterparts in most areas of study, particularly in the fields of medicine, law and sciences.

45. The advancement of women in the political, economic and social fields is indicative of the progress that has been made in the promotion and protection of women's rights. As noted previously, however, women still remain vulnerable to discrimination and stereotyping. As indicated in the Third Periodic Report, there are a number of legislative and other measures to deal with discrimination and stereotyping. The Bureau of Women's Affairs (BWA) is involved in ongoing public education in the print and electronic media as well as through various workshops, seminars and public fora to eliminate discriminatory patriarchal attitudes and gender stereotyping. Several such sessions are being held on an ongoing basis in schools, communities, churches and other civil society group across the country.

46. In the continued effort to address gender inequality and the marginalization of Jamaican males, the BWA established a Male Desk in April 2009 to extend the Bureau's reach and provide opportunities to engage men in the gender discourse. Support is also being provided by the BWA to Father's Incorporated, an NGO which works with men and boys.

47. The Ministry of Education (MOE) under several programmes such as the Primary Education Support Project which began in 2001, the Reform of Secondary Education Project which began in 1993 and the Secondary School Enhancement Programme which was introduced in 2001, is working to address gender-based stereotypes in text books, school curricula and teaching methods. The overall objective is to modify the educational environment in order to allow boys and girls to select and pursue the subject areas of their choice. Women are now in fields traditionally dominated by men such as plumbing and pipe-fitting, construction, air-conditioning and refrigeration, welding as well as both electrical installation and maintenance. The MOE plans to intensify the incorporation of gender-sensitization training for pre- and in-service teachers. Changes have also been made to the Education Code of the Ministry to allow teenage mothers to return to the school system.

48. The Vision 2030 National Development Plan is also expected to foster the implementation of a comprehensive strategy, including clear goals and timetables, to modify or eliminate negative cultural practices and stereotypes that discriminate against women.

49. In addition, there is the National Transformation Programme (NTP), branded Fresh Start Jamaica, being spearheaded by the Office of the Prime Minister. The Programme aims to transform and unite mass public perception and action around National Core Values (NCVs) which are expected to effectively challenge the existence of negative attitudes which foster gender stereotyping and discrimination against women and girls.

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<sup>15</sup> Ibid

**Question 6**

50. There is no indication that Parliament intends to revise the definition of discrimination proposed in the Charter of Fundamental Rights and Freedoms to include gender identity and sexual orientation. Although consensual sex between adult males remains proscribed by law, there is no legal discrimination against persons on the grounds of their sexual orientation. The Government of Jamaica is opposed to discrimination or violence against homosexuals.

**States of Emergency (Art. 4)****Question 7**

51. Section 26 of the Constitution provides for a period of public emergency when it is deemed, *inter alia*, that “action has been taken or is immediately threatened that would be of such a nature and so extensive that it would be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life.”

52. On Sunday, 23 May 2010, the Government of Jamaica declared a State of Emergency for the parishes of Kingston and St Andrew. The State of Emergency was imposed for an initial period of 30 days until 23 June 2010. It was subsequently extended by Parliament for an additional 30 days until 23 July 2010 and expanded to the parish of St. Catherine. In accordance with article 4 of the ICCPR, the Secretary-General of the United Nations was notified of the declaration of the State of Emergency.

53. The State of Emergency was imposed to facilitate the efforts of the security forces to combat criminal activity which had become a serious threat to institutions of the State. The measures taken during the period of public emergency were consistent with Jamaica’s obligations under international law and did not involve discrimination on the ground of race, colour, sex, language, religion or social origin. The Emergency Powers Regulations 2010, which provided specific guidelines on the powers conferred during the period of public emergency, upheld the following non-derogable rights under the Covenant:

- (a) Right to life (article 6);
- (b) Right to be free from torture, cruel, inhuman or degrading treatment or punishment (article 7);
- (c) Freedom from slavery (article 8);
- (d) Freedom from imprisonment on the ground of inability to fulfil a contractual obligation (article 11);
- (e) Non retroactive application of criminal penalties – *nulla poena sine lege* (article 15);
- (f) Rights to recognition as a person (article 16);
- (g) Right to freedom of thought, conscience and religion (article 18).

54. The joint military/police operation was precipitated by intelligence gathered by the security forces that heavily armed men opposed to the decision to issue the authority to proceed with committal hearings for the extradition of Mr. Christopher Coke to stand trial in the United States on drugs and gun trafficking charges, were preparing to attack members of the security forces. Intelligence also indicated that criminal elements in other communities intended to launch attacks on the security forces. This was corroborated by the fact that two (2) police stations were burnt and two (2) policemen killed on 23 May 2010.

Improvised explosive devices were used by criminals to fortify strategic points in the community to impede access by the security forces.

55. During the military/police operation, 73 civilians and 1 member of the Jamaica Defence Force were killed and approximately 4000 persons were detained. Illegal firearms, including high powered weapons, were also recovered from criminal elements in West Kingston.

56. Official security reports state that several known criminals who were killed or detained were not resident in the area and had travelled from other parts of the island to West Kingston prior to the operation.

57. Consistent with its obligations to protect the rights of the citizens in the affected areas, the Government immediately facilitated a number of actions to ensure that the allegations of unlawful use of force by the security forces were addressed so that the perpetrators could be held accountable. Measures that were immediately put in place included:

(a) The establishment of a unit of the Office of the Public Defender in West Kingston to receive complaints from persons who witnessed or experienced violations of fundamental rights on the part of the security forces;

(b) The Complaints Division, a unit of the Jamaica Constabulary Force established by an Act of Parliament, also set up an office in the area of operation with a specific mandate to investigate complaints of residents against alleged breaches committed by police personnel;

(c) To ensure maximum transparency and to allow independent analysis of the conduct of the joint police/military operation, the media was allowed access to the affected communities as soon as it was safe to do so on Wednesday May 27, 2010. The media conducted interviews with residents who were free to discuss any alleged violation of their fundamental rights.

58. The death of civilians is still the subject of ongoing investigations to determine whether any member of the security forces was responsible for any of the deaths and whether there had been any unlawful use of force. Any judgement at this time is, therefore, premature. These investigations have been conducted since 25 May 2010 under the purview of the Bureau of Special Investigations of the Jamaican Constabulary Force. The results of the investigations will be forwarded to the Director of Public Prosecutions who will determine whether unlawful force was used and, if this is the case, the applicable disciplinary action and prosecution against officers found responsible. The Public Defender is also still conducting his own investigations.

59. There have been calls for an Independent Commission of Inquiry into the security operations but a final decision on the matter will be taken after the Public Defender completes his investigation and presents his report.

60. It should be noted that in the 7-month period from May to December 2010 there was a significant reduction in the level of crime.

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

### **Question 8**

61. A total of 263 were reportedly killed by the Police in 2009. Although challenges persist in respect of allegations of abuse by agents of the State, many of these casualties result from the use of justifiable force by the police in the lawful execution of their duties or for the purpose of self-defense. Seventeen (17) police officers were killed in 2010

compared to eleven (11) in 2009. There is clear evidence of the existence in Jamaica of well-armed gangs involved in the trafficking of guns and weapons with the resources to, in many instances, better equip themselves than the police force. It should be noted that shootings due to police/criminal confrontations increased by 5.9 per cent in 2009.<sup>16</sup>

62. It should also be noted that emphasis is being placed on enhancing the training being offered to security personnel with a special focus on the fundamentals of ethics, use of force and human rights. Training in the area of human rights is being provided in collaboration with human rights NGOs. The overall objective is to reduce the number of complaints of police excesses and restore public confidence in and support for the police. The Jamaica Defence Force has also put in place revised rules of engagement which focus on further reducing the chances of civilian deaths when members of the Force carry out their operations.

### **Question 9**

63. The Independent Commission of Investigations Act, 2010 explicitly provides for the independence of the Independent Commission of Investigations (INDECOM) as it mandates that INDECOM shall not be subject to the direction or control of any other person or authority. As a Commission of the Parliament, INDECOM reports only to the Parliament. In December 2010, the Commission was allocated J\$86.4 million to carry out its operations. Of that amount, J\$51.4m is for remuneration. The Commission has since embarked on an aggressive recruitment campaign, with a strong emphasis on recruiting investigators. It should be noted that for the fiscal year 2011/2012, the Commission has been allocated in excess of J\$100 million to boost its budget.

64. With respect to extrajudicial killings, it should be noted that in 2009, over thirty-five (35) police officers were charged for various offences ranging from shooting with intent to murder. A total of ten (10) police officers were charged with murder. The cases are before the Courts.

65. The Government takes every allegation of an extrajudicial killing seriously. The investigative procedure in Jamaica of cases involving questionable police shootings is a comprehensive process. It involves a number of bodies and various levels of inquiry to ensure the greatest degree of accuracy in rulings and the preservation of the credibility, probity and integrity of the investigation and judicial systems.

### **Question 10**

66. The Government has embarked on a number of initiatives to disrupt or dismantle organised criminal syndicates and gangs in Jamaica, disarm them and prosecute perpetrators. These include the intensification of operations by the security forces through searches, vehicle stops and check points, targeted raids, cordons and search and use of Curfew Orders; the roll out of Community Policing in 19 geographic divisions in the Jamaica Constabulary Force as well as through improved competencies in crime data and intelligence analyses.

67. Another area of focus is increased collaboration with bilateral and regional partners to reduce the availability of illicit firearms and narco-trafficking to Jamaica as well as to facilitate cross-border identification and prosecution of traffickers. As a part of this initiative, the Narcotics Division and the investigative arm of Operation Kingfish were merged to form the Transnational Crime and Narcotics Division (TCND) of the Jamaica

<sup>16</sup> Economic and Social Survey of Jamaica, 2009

Constabulary Force (JCF). The TCND's mandate includes trafficking of drugs, firearms and persons, and dismantling of criminal gangs.<sup>17</sup>

68. Priority attention is also being given to the seizure and confiscation of the assets of gang members pursuant to the Proceeds of Crime Act (POCA). The JCF has deployed twenty (20) additional financial investigators to work in the Financial Investigations Division (FID) to increase synergy in financial crimes investigation and to enhance efforts to apply civil forfeiture provision under POCA. It is also expected to facilitate an increase in intelligence sharing between the National Intelligence Bureau and the Financial Investigation Division.

69. The Government is also pursuing several legislative measures to advance the fight against crime and violence in Jamaica. These include the Promulgation of Regulation to the Plea Negotiations and Agreements Act to allow for the efficient use of plea agreements and the drafting of the Anti-Gang/Organised Crime as well as DNA Legislation. Specific anti-crime legislation has also been passed which seek to grant greater powers to the authorities to assist the Government's efforts to reduce crime and violence in the country. They are: an Act to amend the Bail Act; an Act to further amend the Firearms Act; an Act to amend the Offences Against the Person Act; an Act to amend the Parole Act; an Act to make interim provision in relation to the grant of bail in specified circumstances; and an Act to make interim provision extending the powers of arrest and detention under Sections 50B and 50F of the Constabulary Force Act.

70. Since the start of 2011, an Anti-Gang/Organized Crime Unit has been established within the JCF. A Crime Prevention and Community Safety Strategy is being developed by the Ministry of National Security for approval by Cabinet. The Strategy seeks to address crime prevention and community safety, including gang violence, in a coordinated fashion that effectively utilizes the resources of all government agencies and civil society partners. The Strategy will guide evidence-based social intervention programmes and initiatives in all volatile and vulnerable communities in Jamaica.

71. Programmes such as the Crime Stop Programme continue to be used as a means of encouraging public participation in the fight against crime. It provides monetary incentives to persons who assist in the identification of known offenders and is funded by the private sector and managed by the National Crime Prevention Fund within the Ministry of National Security. At the end of 2009, approximately J\$1.8 million was paid out in rewards, 20 per cent more than in 2008. From the 1,176 calls received, 104 arrests were made. Among the arrests made, 27 were for drug charges, 26 for illegal possession of firearm and 11 for murder.<sup>18</sup>

72. All major crimes - shooting, carnal abuse, robbery, break-ins and larceny – declined in 2010, when compared to 2009. This was the first time since 1999 that there was a reduction in all major crimes.

### **Question 11**

73. The State does not practice or support violence against-or the killing of-human rights defenders.

74. In respect of the specific individuals mentioned in the question, the Committee is invited to note that in 2006 one person was convicted and sentenced to life in prison for the

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<sup>17</sup> Economic and Social Survey of Jamaica, 2009

<sup>18</sup> Source: Economic and Social Survey of Jamaica, 2009

2004 murder of Brian Williamson. In 2006, four persons were charged with the murder of Lenford 'Steve' Harvey. The case is still before the Courts.

### Question 12

75. Jamaica does not intend to ratify the Second Optional Protocol to the ICCPR nor to amend the Constitution with the aim of abolishing the death penalty. In November 2008, Parliament voted to retain the death penalty.

76. In 2005, legislative changes were made prohibiting the imposition of the mandatory death penalty. A judge is no longer compelled to impose the death sentence and 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 life imprisonment instead of the death penalty. A review of mandatory death sentences previously imposed resulted in sentences being quashed and a judicial determination being made or is to be made as to the appropriate sentence to be imposed for each convict.

77. As noted in the Third Periodic Report, under the Offences against the Person Act, the death penalty may be imposed on persons convicted of the murder of:

- (a) A member of security forces, a correctional officer, a judicial officer or someone with the same powers as members of the Jamaica Constabulary Force acting in the execution of his duties;
- (b) A witness or juror;
- (c) A Justice of the Peace acting in the execution of his judicial functions;
- (d) A murder committed pursuant to an arrangement where money or anything of value passes or is intended to be passed from one person to another at the request or direction of that other person, or where money or anything of value is promised by one person to another or to a third person at the request or direction of that other person;
- (e) A murder committed by a person in the course of furtherance of an act involving the use of violence by that person which, by reason of its nature and extent, is calculated to create a state of fear in the public;
- (f) A murder committed in the course or furtherance of a robbery, burglary or housebreaking; arson in relation to a dwelling house or any sexual offence; and
- (g) Multiple murders.

### Question 13

78. Adolescents and disabled persons are priority groups for intervention under the Ministry of Health's Family Planning and Reproductive Health Programme. There is a policy for the provision of contraceptive services to minors younger than 16 years of age. The policy became necessary as the evidence revealed that the age of sexual debut among girls is 15 years and 12 years among boys. Although still relatively high, teenage fertility has declined to 72 per 1,000 coming from 112/1,000 in 1997 and 79/1,000 in 2002<sup>19</sup>. Approximately 20 per cent of all pregnancies occur in teenagers, a reduction from 25 per cent some 8-10 years ago.

79. Reproductive health services, including family planning, are available at no cost to the user through a network of over three hundred and twenty (320) health centres

<sup>19</sup> 2008 Reproductive Health Survey

geographically dispersed throughout the island. Services include public education through the range of media available and messages promoted in collaboration with the National HIV/STI programme. There has also been an intensification of media campaign targeting, in particular, teenagers. The emergency contraceptive pill can be obtained without a prescription from a pharmacist but with counselling.

80. There are no legal provisions or facilities for safe legal abortions in Jamaica. As abortions are illegal in Jamaica and are not a notifiable condition, accurate data on its occurrence and attendant complications are not available. However, abortions are a contributor to maternal deaths. It is estimated that on average there are 3-4 cases of maternal deaths resulting from abortions and its complications each year. About half of these occur in teenagers, including those below 16 years of age. For the period 2000-2007 there were twenty-three (23) maternal deaths related to abortions.

81. There are ongoing discussions at the Parliamentary level towards finalizing a policy on abortion and determining whether to allow for safe abortion legally. In the interim, reproductive health services, including the management of complications of abortion, continue to be provided free of cost to the user in the public health system and surveillance for maternal deaths continue. Public education on safe reproductive health is on-going.

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

#### **Question 14**

82. Corporal punishment is still legal in Jamaica but its use is restricted to specific levels of the education system and private family homes. It is strictly prohibited in state childcare facilities, pursuant to the Child Care and Protection Act, 2004.

83. The use of “moderate and reasonable corporal punishment as a means of disciplinary sanction” is legal in all schools in Jamaica, except early childhood institutions. Even though corporal punishment exists as a disciplinary tool in schools, its use is strongly discouraged by the Ministry of Education. The Government is seeking to change the laws to abolish the use of corporal punishment at all levels of the education system with the adoption of a Paper on Safe School Policy. The Policy, which has been developed by the Ministry of Education, will be tabled in Parliament for approval. The Ministry of Education is also developing behaviour-management strategies which would form the standard operating procedures for how children are to be disciplined in schools. In the absence of corporal punishment in maintaining discipline in schools, greater focus is also being placed on parenting with the establishment of the National Parenting Commission. The Commission will lead the implementation of the National Parenting Policy which will support the development of an enabling environment for the nation’s children.

84. Even though there is nothing prohibiting the use of corporal punishment in private family homes, the CCPA created a legal obligation to report information or suspicions that a child has been, is being or is likely to be abandoned, neglected, physically or sexually ill-treated or otherwise in need of care and protection (as defined under Section 8 of the Act). This legal obligation extends to every member of society, but is particularly emphasized for a range of prescribed persons including those in the teaching profession, guidance counsellors, medical professionals and social workers.

85. In October 2010, a private Bill was tabled in the House of Representatives that would seek to repeal the Flogging Regulations Act and the Crime (Prevention of) Act which provide for the act of flogging and whipping as a means of punishment. The Bills are to be debated.

**Question 15**

86. There is no legislation or common law provision in Jamaica that governs torture as a separate or distinct offence. There are, however, provisions under the Offences against the Person Act for the prosecution of offences such as assault, assault occasioning bodily harm, wounding with intent, shooting with intent, unlawful wounding, inflicting grievous bodily harm and causing grievous bodily harm with intent.

87. The number of complaints received by the Director of Public Prosecutions (DPP) against law enforcement and detention personnel related to such offences and allegations of ill-treatment over a 3-year period (2008 – 2010) amounted to 1,751, of which the DPP has ruled on 1,099.

Between 2008 – January 2011, seven (7) cases were disposed of in the following ways:

- (a) Three (3) matters were disposed of as not guilty verdicts were entered;
- (b) A retrial was ordered in one (1) matter by virtue of a hung jury;
- (c) Two (2) matters were disposed of as guilty verdicts were entered; and
- (d) In one (1) matter the police officer pleaded guilty.

88. The Office of the Director of Public Prosecutions does not impose sanctions on officials accused of ill-treatment. In cases where police officers are accused of ill-treatment, victims can seek compensation. Where a police officer who was acting as an agent of the State inflicted injury on a victim, that victim can seek representation and take legal action against the State in order to claim damages, thereby exercising his or her civil remedies.

**Question 16**

89. Crime affects all segments of Jamaican society, with the most vulnerable groups being women, children and the urban poor. Women remain the primary victims of rape and domestic violence. Reducing violence against women and girls, therefore, remains a priority for the Government.

90. Since the Third Periodic Report, in addition to existing legislative and other measures to address the issue of sexual violence against women and girls, the Sexual Offences Act was passed in October 2009. This Act creates new provisions for the prosecution of rape and other sexual offences, including marital rape, anonymity of complainant in rape and other sexual offences, as well as incest. There are also public education programmes designed to increase awareness about the problem, encourage the reporting of sexual abuse as well as to combat and eradicate violence against women. Such campaigns target schools, community-based groups and civic groups.

91. According to the Jamaica Constabulary Force, 1175 cases of rape and carnal abuse were reported in 2009, with the following breakdown: 672 cases of rape and 503 cases of carnal abuse. Of the total number of cases, 585 have been cleared up. The comparable figures for 2008 are 849 reported cases of rape and 610 reported cases of carnal abuse. Of the total number of reported cases in 2008 (1459), 672 were cleared up.

92. There is evidence to suggest that women and girls are targeted for sexual favours. It is factually incorrect to suggest, however, that women are the subject of reprisals related to the reporting of criminal activities of gang members. Women tend to be targeted when they are perceived to have alleged connections to criminal gang members. Regrettably, women are themselves becoming increasingly involved in criminal activities and are perpetrators of violence.

93. The Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA) has been upgraded as part of a general strategic review of the Jamaica Constabulary Force

which resulted in increased resources and human capital being injected into the operations to better equip Officers to respond to all types of abuse and exploitation of women and children. The Centre has a unit at every police station in each parish.

#### **Question 17**

94. Domestic violence remains a source of concern in Jamaica. According to the 2008 Reproductive Health Survey of Jamaica, there are stark gender imbalances in the perception of spousal abuse between men and women as almost all female respondents agree that men do not have the right to hit a woman in any circumstance, while 1 in 5 men believe that a man has the right to hit a woman for being unfaithful and/or disobedient. Studies also find that abuse by intimate partners, whether current or past, are the most prevalent form of violence against women of all ages, socioeconomic background and educational levels. While there is evidence to suggest men being abused by women, many of these cases go unreported. Domestic murders represented 4 per cent of the murders committed in 2010. Violence against women is recognised as a public health concern and as such the Ministry of Health has formulated a monitoring mechanism referred to as the Jamaica Injury Surveillance System (JIIS) to detect violence-related injuries (VRIs).

95. As noted in the Third Periodic Report, there are several measures being undertaken by the Government to deal with the problem of domestic violence. This includes legislative measures such as the enactment of the 2004 Domestic Violence Act which broadens the categories of women protected to include not just married women but also women in common-law relationships. The Bureau of Women's Affairs also plays an important role by providing training to public and private sector workers on a range of issues, including that of sexual harassment at the workplace and domestic violence. The work of the BWA is complemented by the work of several non-governmental organizations. These include Woman Inc. which operates the Women's Crisis Centre and provides 24-hour hotline counseling to victims of domestic violence. The Crisis Centre also provides temporary emergency shelter for victims of violence and receives funding assistance from the Government. Other NGOs which address domestic violence include the Women's Centre of Jamaica Foundation and Women's Media Watch.

96. Technical assistance is provided by bilateral and multilateral partners for the implementation of projects aimed at addressing gender-based violence. One example is the "Reducing Gender-based Violence in Jamaica: Increasing Awareness, Enhancing Access to Protection, Strengthening Responses (2008 – 2009)" project which was funded by the United Nations Trust Fund (UNTF), with technical support from the United Nations Development Fund for Women (UNIFEM). Under this project, training was provided to one hundred and seventy five (175) human resource managers and practitioners, and twenty-nine (29) judges/resident magistrates. A National Plan of Action on Violence Against Women/Gender-based Violence will be developed outlining a comprehensive strategy to address the issue. Also noteworthy is the project entitled "Strengthening State Accountability and Community Action for Gender-based Violence in the Caribbean" (2009-2010) which was undertaken with other CARICOM countries and which was aimed at reducing gender-based violence through strengthened and responsive State and civil society actions. It formed part of a broader strategy to address deeply entrenched stereotypical views regarding issues of power relations and masculinity as it relates to gender-based violence.

97. In recognition of the importance of training law enforcement officers to adequately respond to domestic violence, measures have been taken to increase their awareness through the inclusion of a "Domestic violence intervention" module in the training syllabus

of the Jamaica Police Academy Basic Training and Probationer Training<sup>20</sup>. Approximately 10 per cent of the police force has received training in this regard. Mediation Training is mandatory for officers completing the two-year training in general policing. To respond to the number of reports of domestic violence in one major Police Division in the parish of St. Catherine, a Domestic Violence Desk was established and staffed by police officers who were trained as mediators. The creation of the Desk provides opportunities for women and men seeking redress in domestic violence cases to access the services.

98. Support services to victims of domestic violence are also offered through Jamaica's Victim Support Unit (VSU)<sup>21</sup>. The Unit is the first of its kind in the Caribbean and has offices in all 14 parishes of Jamaica. It is strategically located within the Ministry of National Security and provides support in the form of counselling, emotional support and other services to victims of gender-based violence in volatile communities. In 2009, the VSU served 12, 096 clients, 18.3 per cent more than in 2008.<sup>22</sup> Of the number served, 44.0 per cent (5,318) were new, with 72.2 per cent being female. Approximately 37.7 per cent of the females who sought assistance were in the 12 – 18 age group followed by 23.0 per cent in the 30-44 age group. Of the total number of clients received by the VSU, 15.6 per cent were carnal abuse cases, 13.0 per cent rape cases, 11.1 per cent domestic violence cases and 22.8 per cent 'other' cases. Of the cases in 2007, carnal abuse represented 14.4 per cent, rape 12.8 per cent, domestic violence 12.3 per cent and others accounted for 36.2 per cent. In order to improve service delivery, a total of 410 volunteers were trained in 2005 to strengthen the VSU's capacity to identify victims of violence at the community level and to facilitate appropriate intervention, referral and assessment.

99. An overview of complaints filed and disposed of under the 2004 Domestic Violence Act is produced below.

Table 1:

Complaints filed and disposed of under the Domestic Violence Act<sup>23</sup>

INDICATORS	2003	2004	2005
No of complaints filed in the courts under Domestic Violence (DV) Act	1,701	1,604	1,177
No. & % of complaints disposed of in the courts under the Domestic Violence (DV) Act	932 (55%)	963 (60%)	799 (68%)

### Question 18

100. The Extradition Act provides that a person should not be extradited where he might, if extradited, be denied a fair trial, or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions. Jamaica also respects the general international law principle of non-refoulement.

<sup>20</sup> UNIFEM/ECLAC (2003) Eliminating Gender-based Violence: Ensuring Equity. A Regional Assessment of Actions to End Violence Against Women in the Caribbean

<sup>21</sup> Victim Support Unit

<sup>22</sup> Economic and Social Survey of Jamaica 2009

<sup>23</sup> Ministry of Justice

**Elimination of slavery and servitude (Art. 8)****Question 19**

101. The Trafficking in Persons Act was adopted in 2007. The provisions of the Act are in keeping with the international Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. It criminalizes trafficking in persons, with particular regard to victims who are women and children, and prescribes measures to prevent and combat trafficking by facilitating efficient investigations, just and effective punishment of traffickers, and protection and assistance to victims.

102. A National Task Force against Trafficking in Persons (NATFATIP) was established in 2005 comprising representatives from both governmental and nongovernmental organizations. It is responsible for, inter alia:

- (a) Increasing sensitivity to trafficking in persons through public education;
- (b) Facilitating the training of police officers, customs and immigration officials, the judiciary as well as diplomatic and consular officers;
- (c) Recommending amendments to key legislation that are likely to aid in the prevention of trafficking in persons, prosecution of offenders and enhance the provisions to protect victims; and
- (d) Establishing protocols for intervention to help victims of trafficking.

103. To enforce the law, a Trafficking in Persons (TIP) Unit was established in the Jamaica Constabulary Force. The Unit works in collaboration with the Ministry of Labour and Social Security to screen applications for work permits and to conduct follow-up investigations to deal with any breaches to the permit granted. A shelter to house victims of trafficking has also been developed.

104. Several studies have documented and assessed the scope and nature of human trafficking in Jamaica. One study, 'Human Trafficking for Sexual Exploitation and Forced Labour in Jamaica' by Ricketts and Dunn (2007) -- commissioned by the Government of Jamaica in collaboration with the Organisation of American States (OAS) -- delved into the local experience with human trafficking and reported the following findings: victims were predominantly female (79.3 per cent); the most prevalent age group was 18-24 years; their level of education was primarily secondary (89.7 per cent); their union status was predominantly single (74.1 per cent); and 86.2 per cent of victims were from a working class/poor background.

105. Jamaica is a source, transit and destination country for victims of human trafficking from the Caribbean; Central, South and North America; and Eastern Europe.

106. Between 2008-2010, seven (7) persons were arrested and charged with trafficking in persons as follows:

- (a) 2007 – 1;
- (b) 2008- 5;
- (c) 2009- 0;
- (d) 2010- 1.

107. The number of convictions imposed on persons involved in human trafficking between 2008–2010 is as follows:

- (a) One (1) substantive conviction in 2008;

(b) One (1) conviction for trafficking related offence where three (3) juveniles between the ages of 16 and 17 pleaded guilty to indecent assault and are presently cooperating with the Crown to give evidence against the human trafficker.

108. The Trafficking in Persons Act provides for both fines and custodial sentences to be imposed on persons involved in human trafficking.

109. In an attempt to further increase awareness and law enforcement/prosecutorial efforts, training/sensitization sessions were conducted in 2010 by the Government of Jamaica, in collaboration with the Organisation of American States (OAS). Participants included police officers, immigration and customs officials, members of the judiciary, prosecutors and other relevant civil servant personnel. Areas of concentration included international and local legislative frameworks against human trafficking, immigration standard operating procedures of entry and exit control, victim identification, assistance and protection, and ethical interviewing of victims of trafficking. Government officials also participated in an international workshop on human trafficking which was funded by the International Organisation on Migration (IOM). Foreign Service Officers have also been exposed to training on trafficking in persons.

110. Additional training was also provided for members of the criminal justice system and NGOs in respect of the Law enforcement Manual Guide to Investigation: Practicalities of the Trafficking in Persons (Prevention, Suppression and Punishment) Act, 2007. Relevant areas of coverage included the identification and treatment of victims. Additionally, a Crisis Counselling Manual was also developed to treat with the handling of child victims and general trauma cases involving children.

111. Public awareness programmes about human trafficking are also executed by the Bureau of Women's Affairs. During the period 2006 – 2008, the Bureau conducted 69 sensitization sessions on TIP with a total of 4, 315 participants including women, men and youths.

112. Right to liberty and security of person and treatment of persons deprived of their liberty (Art. 9 and 10)

#### **Question 20**

113. The permissible grounds for deprivation of liberty and for redress mechanisms concerning unlawful arrest or detention are contained in Section 15 of the Constitution. The permissible grounds for deprivation of liberty are as follows:

- (a) In consequence of his/her unfitness to plead to a criminal charge;
- (b) In execution of the sentence or order of a court, whether in Jamaica or elsewhere, in respect of criminal offence of which he/she has been convicted;
- (c) In execution of an order of the Supreme Court or of the Court of Appeal or such other court as may be prescribed by Parliament on the grounds of his/her contempt of any such court or of another court or tribunal;
- (d) In execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him/her by law;
- (e) For the purpose of bringing him/her before a court in execution of the order of a court;
- (f) Upon reasonable suspicion of his/her having committed or of being about to commit a criminal offence;
- (g) In the case of a person who has not attained the age of twenty-one years, for the purpose of his/her education or welfare;

(h) For the purpose of preventing the spread of an infectious or contagious disease;

(i) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his/her care or treatment or the protection of the community;

(j) For the purpose of preventing the unlawful entry of that person into Jamaica, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Jamaica or the taking of proceedings relating thereto;

(k) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Jamaica or prohibiting him/her from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he/she is permitted to make to any part of Jamaica in which, in consequence of any such order, his/her presence would otherwise be unlawful.

114. Section 15 (4) of the Constitution provides redress in the form of compensation in instances of unlawful arrest or detention. The Government would, therefore, be responsible for providing compensation to any person who is unlawfully arrested or detained by a police officer, or any other officer with similar powers.

115. Approximately four thousand (4000) persons were detained by the Police during the period of the State of Emergency. The authority to do so was granted by the State of Emergency Regulations which allow for the arrest and detention of persons whose behaviour give reasonable grounds for suspecting that he or she is acting in a manner prejudicial to public safety, or has committed an offence against the Regulations. Such persons can be detained up to a period not exceeding 24 hours. The Competent Authority, however, has the power to extend that detention period by an additional 5 days on the authority of a Resident Magistrate or a police officer not below the rank of Deputy Superintendent.

116. The action to arrest and detain persons was in response to extraordinary challenges to the maintenance of law and order. The action was necessary to ensure the safety and security of citizens, and to facilitate the efforts of the security forces to combat criminal activity which had become a serious threat to institutions of the State. As indicated previously, investigations are ongoing into the conduct of the operation and the circumstances of civilian deaths.

#### **Question 21**

117. The Constabulary Force (Interim Provisions for Arrest and Detention) Act, 2010, which came into effect on 23 July 2010, provides the police with greater powers of arrest and detention in stipulated circumstances, particularly with respect to the power to establish cordons and curfews. This Act has a built-in review clause and has a life of one year. It shall cease to be of effect unless extended by a resolution by both Houses of Parliament.

118. By virtue of the Act, only specified officers can authorise arrest or detention (i.e. a Divisional Commander, Area Commander or a member of the Force not below an Assistant Commissioner of Police), once he or she has reasonable grounds for the arrest and detention of the person. Furthermore, upon arrest or detention, the person who has been arrested or detained must be immediately advised of the reasons for such action and shall, as soon as possible, be brought before a Justice of the Peace who will then decide whether or not there were reasonable grounds for this action.

119. If the Justice of the Peace believes there are reasonable grounds and is satisfied that arrest or detention is reasonably required, the arrest or detention period may be extended up to seventy-two (72) hours. The maximum period of detention and arrest before an individual can be brought before a Resident Magistrate is seventy-two (72) hours. Persons in police custody have access to a lawyer.

120. The Bail (Interim Provisions for Specified Offences) Act, 2010, came into effect on 23 July 2010. It has an initial life of one year and may be extended for specific periods by resolutions in both Houses of Parliament. The Interim Act was deemed necessary to strengthen the efforts of the security forces to reduce the crime rate in Jamaica.

121. Under the Act, three categories of persons are not entitled to bail until sixty (60) days have passed. Persons charged with murder and other related offences, treason, malicious damage to property, larceny and firearm related offences (paragraphs 1-6 of the Second Schedule to the Act) are not entitled to bail until sixty (60) days have passed. Individuals charged with drug related offences, human trafficking, rape and other sexual offences (paragraphs 7 – 11 of the Schedule) who have been previously convicted of any of the offences mentioned are also not entitled to bail before sixty (60) days have passed. In both cases, the sixty (60) day period begins on the day the person is first charged and the defendant has the burden of satisfying the court that bail should be granted.

122. Persons charged with the offences outlined in paragraphs 7–11 of the Second Schedule to the Act but who have not been convicted of any of the offences mentioned are entitled to bail 'only if they can satisfy the Court that bail should be granted'. The sixty (60) day period does not apply to this person.

123. An individual held without bail must be brought before the court on a regular basis and within seven (7) days after he or she is first charged, in order for the court to determine whether the person should continue to be held in custody or granted bail. Thereafter, unless otherwise ordered, the individual shall be brought every fourteen (14) days after each court appearance until the sixty (60) day period has expired.

## **Question 22**

124. The treatment of offenders or detainees is guided by a number of Acts as well as international treaties to which Jamaica is a signatory. Together these Acts provide guidelines on the pre-trial, incarceration, supervision and release of prisoners or detainees. These include the Corrections Act, the Child Care and Protection Act, the Criminal Justice (Administration) Act, the Criminal Justice (Reform) Act, the Police Constabulary Forces Act and the Standard Minimum Rules for the Treatment of Prisoners. To ensure compliance, the Department of Correctional Services undertakes annual inspections of prison facilities. Reports generated in this regard are submitted and considered by Parliament. There is also an Inspection Unit within the Ministry of National Security which, since 2010, has started to undertake independent inspection of prison facilities, with reports to be submitted to the Commissioner of Corrections. Previously, this Unit only investigated complaints registered by staff and inmates of prison facilities.

125. A complaint of abuse is treated as a serious and urgent matter. If the prisoner makes the complaint to a junior staff it is referred to a senior officer who is duty bound to bring it to the attention of the Superintendent. The Superintendent authorizes an Officer of the gazetted rank to take a statement from the prisoner. An internal investigation is done and based on the nature of the abuse, may be dealt with at the Institution level and a report submitted to the Office of the Commissioner of Corrections.

126. Inmates can request that their complaints be forwarded to the Commissioner of Corrections even if the Superintendent believes it has been adequately dealt with at the level of the Institution. Complaints considered by the Commissioner of Corrections may be

referred to the Inspectorate Unit of the Department of Corrections or the Ministry of National Security for investigation. The findings and recommendations are, thereafter, submitted to the Commissioner of Corrections for necessary action.

**Question 23**

127. The Government acknowledges that the situation in prisons and lock-ups remains far from satisfactory. Many of the challenges were highlighted during the visit to Jamaica in February 2010 by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Overpopulation in prisons, however, must be seen in the context of the high crime level, the shortage of space for remandees in prisons, and resource limitations to effectively resolve this problem.

128. The two major maximum security prisons are operating in excess of 70 per cent of their capacity. The Government is actively seeking funding for the construction of new prison facilities. It should, nevertheless, be pointed out that the Government's ability to undertake these initiatives is constrained by the severe economic and financial condition facing the country. In the interim, however, repairs have been effected to a number of cells, dormitories and prison facilities in order to improve the living conditions of inmates.

129. There is also closer monitoring of inmate/staff relationship and enhanced training opportunities for prison staff to reduce the number of incidents of abuse as well as of conflicts between staff and inmates. Inmates are also exposed to education and skills training.

130. The Government will continue to use its best endeavour to address the situation in prisons and lock-ups. This is an area which will require international support and assistance.

**Question 24**

131. There is segregation in detention and prison facilities between juveniles and adults, persons on remand and convicts. Female juveniles at the Fort Augusta prison, for example, are kept in separate dormitories, except for those occasions during the day when they are being exposed to training and educational classes. Male juveniles are also kept in separate facilities and are completely isolated, even if they are being housed on the same compound with male adults.

132. The Government is working to reverse the current practice of the incarceration of children in police lock-ups and to implement measures to protect children in juvenile correctional facilities. An audit of all juvenile correctional institutions is being conducted and new juvenile remand and correctional centres will be established. An existing facility is being renovated which will become the new Metcalfe Street Remand Centre for Boys. The project is near completion and will have a capacity to house two hundred and eight (208) male juveniles and will alleviate the problem of housing juveniles in police lock-ups.

133. To ensure that children placed in correctional facilities will be exposed to appropriate programmes to address their behavioural challenges and development needs, several new measures will be undertaken. There will also be a review of the recruitment policy for correctional officers and the staffing requirements at correctional institutions as well as a review of the training curriculum for officers assigned to juvenile facilities. Consideration is being given to placing juvenile correctional and remand facilities, now under the jurisdiction of the Correctional Services, under the Child Development Agency. A National Inspectorate is to be established to monitor conditions within child care facilities and to ensure adherence to the Child Care and Protection Act. The Ministry of National Security and the Department of Correctional Services, as part of a medium-to-long

term initiative, will be developing a Youth Offender Strategy aimed at identifying and implementing new approaches to help children who are deemed to be out of control.

#### Question 25

134. The report of the Armadale Commission of Inquiry confirmed that there was negligence on the part of the State and some of its public officials who were responsible for the operation of the Centre or who were involved in the events preceding, during and after the fire in which seven (7) girls aged between 15 and 17 perished.

135. The report was referred to the Director of Public Prosecutions, the Commissioner of Police and the Public Service Commission for appropriate action in relation to those persons whose conduct had been called into question by the findings of the Commission. Subsequently, the Commissioner of Police ordered the interdiction of four (4) members of the Jamaica Constabulary Force. Investigations into their conduct are being carried out. The Government has accepted liability for the fire and has agreed to compensate the relatives of the victims.

136. The Committee should note that the Child Development Agency has aligned its Corporate Strategic Plans for 2009 – 2012 with the 2003 Keating recommendations. Accordingly, greater emphasis is being placed on:

- (a) Delivering primary prevention programming through inter-agency collaboration;
- (b) Facilitating significant input and participation from children;
- (c) Promoting family and community care options for children;
- (d) Increasing the number of clients placed in the Foster Care Programme; and
- (e) Reconfiguring residential child care facilities operated by the government to deliver specific programmes.

137. Over 60 per cent of the recommendations have been fully implemented. Many of those implemented are being addressed under the Child Care and Protection Act, 2004, which was enacted one year after the Keating report. These concern the extension of the sentencing options for juveniles, increasing the penalties for child abuse, and the development of financial standards and procedures for privately operated children's homes. To address the need for community outreach programmes, the CDA has been engaged in meetings at the community level. Between 2005 and 2009, the CDA participated in over 2,250 meetings and presentations that impacted over 360,000 individuals<sup>24</sup>.

138. There has been a 16 per cent increase since 2004 in the number of children in the care of the State living in a family-oriented placement option, namely foster care, family reintegration or at home on supervision order. Efforts are also being made to increase the number of foster parents participating in the National Foster Care Programme which in March 2010 stood at approximately 900 families fostering 1,135 children<sup>25</sup>. A review of the Children (Adoption of) Act is also underway to, inter alia, facilitate more adoption of children in care, particularly when they are small.

139. The Agency is also continuously reviewing its organizational structure to improve its service delivery and to expose its staff to the requisite training on a range of issues affecting children. Examples of measures taken in this regard include the training of 200

<sup>24</sup> Source: Child Development Agency

<sup>25</sup> Ibid

staff members in 2009, recruitment of clinical psychologists and the placement of social workers in some Government-run places of safety and children's homes. Other measures include the establishment of a Children and Family Support Unit to provide intervention for vulnerable children and families identified through reports made to the Office of the Children's Registry or through the CDA's Intake Services desk. This action is aimed at:

- (a) Keeping children within families;
- (b) Re-directing them from the Courts thereby eliminating the need for them to enter the child protection system; and
- (c) Engaging partners in the social protection sector in helping families gain access to social intervention programmes.

140. Of the 2,028 reports referred to the CDA Investigation Unit during the 2008/09 fiscal year, the team was able to report on the completion of 1,225 or 61 per cent of the cases<sup>26</sup>.

141. Audits of the physical facilities of all places of safety and children homes are conducted annually. A monitoring team carries out institutional monitoring visits at least three (3) times per quarter per institution. Work is also underway for the development and execution of a tracer study to determine how children are coping after separation. There are also ongoing medical, psychological and dental care services offered to children in places of safety and children's homes as well as those living in a family-oriented environment.

142. Measures have also been put in place to facilitate children in State care being able to make reports or issue complaints on issues involving their care and to allow children access to Monitoring Officers through one-on-one meetings and group sessions. Between April 2006 and March 2009, a total of 753 complaints were received<sup>27</sup>. The CDA has also developed several protocols and operating manuals to enhance the process by which homes are governed and monitored. The Monitoring Team, comprising 5 officers, carry out over 666 announced and unannounced visits to over 61 residential child care facilities island-wide. Work has begun to create additional physical space necessary to ensure the separation of children who are in conflict with the law from those who are in need of care and protection. Over the years, work has been done in partnership with non-government and community based organizations for the establishment of recreational facilities at a number of our children's homes and places of safety.

143. Those recommendations that have not yet been implemented primarily concern those requiring the creation of additional physical facilities to house children in state care. These include recommendations calling for special access by and care for children with disabilities, including through the provision of 'respite care' and special day care facilities. Also yet to be implemented are the recommendations calling for the use of alternative strategies, including the provision of financial support, to assist families willing to care for their disabled children. Implementation has been constrained primarily by a lack of financial and human resources, compounded by the global economic and financial crisis that has magnified fundamental economic structural weaknesses and necessitated the Government's return to a borrowing relationship with the International Monetary Fund.

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<sup>26</sup> Ibid

<sup>27</sup> Child Development Agency

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

### **Question 26**

144. Several measures are being employed to reduce case backlogs, encourage speedy trials and enhance the delivery of justice. These include the provision of additional court rooms; increasing the number of Supreme Court Judges, Masters, Resident Magistrates, Prosecutors and other staff in the Supreme Court and the Office of the Director of Public Prosecutions; and amending the Jury Act to, inter alia, widen the pool from which jurors can be selected. Another tool being used in reducing case backlog is the application of Restorative Justice Practices. Night courts have also been instituted to assist in clearing case backlogs. A total of 35,615 cases were filed in 2009, of which 21,109 (59.3 per cent) were disposed.<sup>28</sup>

145. The increased use of mediation is also being targeted to reduce case backlogs. It is now obligatory, with the revision of the 2002 Civil Procedure Rules, for civil cases to be referred to mediation. Support to the Dispute Resolution Foundation (DRF), the Ministry of Justice's main affiliate entity for the delivery of alternative dispute resolution, has been increased to allow for greater access to mediation which facilitated 832 mediations across the island in 2009. Improved court reporting and the exposure of Judges, Resident Magistrates and other justice sector personnel to training in criminal case management are also expected to have a positive impact.

146. As noted in the Third Periodic Report, there are several measures to improve legal aid representation. This includes the use of a mobile legal aid clinic as well as the strengthening of existing legal aid clinics in the capital city Kingston as well as in Montego Bay by enhancing the availability of attorneys willing to provide legal aid services on a pro bono basis. Pursuant to the Legal Aid Act, the fee structure is under review to keep rates paid to legal aid counsel competitive.

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

### **Question 27**

147. Freedom of expression is a fundamental human right guaranteed under Section 13(b) of the Constitution of Jamaica. Under Section 22 (1) which is included in the provisions of Chapter III, the Chapter guaranteeing fundamental rights and freedoms, a person's freedom of expression is further amplified to include "the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other communication". The Government fully respects this right. There are multiple television stations, subscription cable services and radio stations in Jamaica. Many are operated by the privately-owned Radio Jamaica Limited and its subsidiaries. Two other privately-owned television stations also offer services. According to 2007 figures, there are approximately 70 radio stations. There are only two state-owned media entities – the Jamaica Information Service (JIS) and the Public Broadcasting Corporation of Jamaica (PBCJ). There are also several press media.

148. The legal regime for the censorship of music in Jamaica is governed by the Broadcasting and Radio-Rediffusion Act 1949, the Broadcasting and Radio-Rediffusion (Amendment) Act, 1986, and the Television and Sound Broadcasting Regulations, 1996.

<sup>28</sup> Economic and Social Survey of Jamaica, 2009

149. Section 12 of the Broadcasting and Radio-Rediffusion (Amendment) Act of 1986 established the Broadcasting Commission as a statutory body. The Commission, which administers the Broadcasting and Radio Re-Diffusion Act and the Television and Sound Broadcasting Regulations, makes recommendations to the Minister of Information as to which applicants should receive licenses for radio, television and subscriber services as well as the terms and conditions under which those licences should be granted. The Commission ensures that the operations and programming of licensees meet the standards set out in law. The Commission also has the mandate to undertake or commission research on all areas relating to the electronic media in Jamaica and contributes to the discussions related to the media regulatory policy.

150. In February 2009, for example, in response to public outcry about the insidious effects of lewd sexual lyrics in certain dancehall songs aired on national radio, the Broadcasting Commission imposed a ban on the airing of those songs. A ban was also imposed on songs promoting violence, including expressions by entertainers supporting violence against gays and lesbians. The Commission acted under the powers conferred on it by Section 30 (d) of the Television and Sound Broadcasting Regulations, 1996, which provides that “No licensee shall permit to be transmitted any indecent or profane matter.”

151. The Commission’s actions were also consistent with the Constitutional provisions aimed at restricting freedom of expression in the interest of public morals. The Constitution provides in Section 22 (2) that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the right to freedom of expression to the extent that the law in question makes provision which is reasonably required “in the interest of public morality .... or regulating wireless broadcasting, television or other means of communication, public exhibitions or public entertainment”.

152. The powers of the Commission to suspend broadcasting licences where there is a contravention of the terms of a licence can only be exercised after written notice has been given to the licensee, the licensee has been given an opportunity to justify its actions and has failed to comply with directions from the Commission. Suspension or cancellation can only occur after a recommendation to the responsible Minister (S22). The broadcaster must be allowed an opportunity to show cause why a licence should not be suspended or cancelled. The Minister’s decision is ultimately subject to judicial review. Further, the decision of a Minister not to grant or renew a licence can be considered by an Appeal Tribunal (S 11H). Appeals range from the Appeals Tribunal to the Court of Appeal.

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

### **Question 28**

153. Like all Jamaicans, Maroons are involved in every aspect of national life. They have access to education and employment, and are able to participate in the political life of the country. There are four (4) principal Maroon communities in Jamaica, each with its own Chieftaincy or leader. They maintain some amount of autonomy in the management of their affairs but abide by the laws of Jamaica.

154. Maroons are able to attend schools and are integrated into the national system of education. In one of the Maroon communities (Moore Town), for example, there is a public primary school. Efforts are being made to ensure that the history and culture of the Maroons are included in educational programmes. In many instances, including in teacher-training colleges, Maroon Chiefs or Elders are invited to give lectures, seminars, and workshops to students as part of the curriculum.

155. Maroons are employed in various fields of work and endeavour across Jamaica. The Ministry of Youth, Sports and Culture is actively engaged with Maroon communities to promote the development of a Craft industry through the manufacture of artifacts and other merchandizing solutions. The Ministry of Tourism has also supported similar activities as part of the heritage tourism product, thereby providing additional employment to community members. Additionally, the Institute of Jamaica works closely with the various communities to establish museums. International support is also offered through a 2004 project funded by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) which seeks to safeguard the cultural heritage of the Moore Town maroon community.

156. The Ministry of Youth, Sports and Culture and its agencies maintain a policy of inclusion and regular engagement with the Maroons, especially for the planning of cultural events.

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

#### **Question 29**

157. Jamaica's Third Periodic Report under the ICCPR and follow-up response to issues raised by the Committee were prepared by the Ministry of Foreign Affairs and Foreign Trade following Inter-Ministerial/Agency consultations with several entities including the Attorney General's Chambers, the Ministry of National Security, the Ministry of Youth, Sports and Culture, the Department of Public Prosecutions, the Bureau of Women's Affairs, the Child Development Agency and the Jamaica Constabulary Force.

158. The information prepared following consultations with representatives of non-governmental and civil society organisations for Jamaica's National Report for the Universal Periodic Review (UPR) of the United Nations Human Rights Council in November 2010 was also reproduced in the preparation of the response to the list of issues raised by the Committee. Among the NGOs consulted were Jamaicans For Justice, the Independent Jamaica Council for Human Rights, the Office of the Public Defender, Youth Opportunities Unlimited and Combined Disabilities Association. Efforts will continue to be made to disseminate information on the Covenant to the wider public. The Government will also work towards maintaining a system of regular consultation with all stakeholders.

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