



International Covenant on Civil and Political Rights

Distr.: General
27 October 2011

Original: English

Human Rights Committee

103rd session

Summary record of the 2838th meeting*

Held at the Palais Wilson, Geneva, on Wednesday, 19 October 2011, at 3 p.m.

Chairperson: Ms. Majodina

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* No summary record was issued for the 2837th meeting.

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The meeting was called to order at 3 p.m.

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

Third periodic report of Jamaica (CCPR/C/JAM/3; CCPR/C/JAM/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the members of the Jamaican delegation took places at the Committee table.*

2. **Mr. McCook** (Jamaica) said that his was a country with a long tradition of stable multiparty democracy and deep respect for the rule of law and fundamental human rights and freedoms. As a small island developing country with a small economy, Jamaica faced many challenges in its quest for sustainable development and the attainment of social and economic goals, including the effects of climate change and natural disasters.

3. The economic challenges associated with the global financial crisis had had a serious impact on the short- and medium-term programmes undertaken by his Government, including social and welfare programmes to which it remained committed. Notwithstanding those challenges, Jamaica had made significant strides towards meeting international standards on a number of key social indicators, including the reduction of absolute poverty, malnutrition and hunger, and universal primary enrolment, and was well on its way to attaining a number of Millennium Development Goals.

4. The Government remained committed to the promotion and protection of universal and inalienable human rights for its citizens and was a party to most of the core international human rights treaties. The Constitution and a number of other domestic laws gave effect to the rights enshrined in the International Covenant on Civil and Political Rights, which could therefore be implemented and enforced in the domestic courts.

5. The establishment, as early as 1974, of several bodies to promote and protect human rights, including the rights of the most vulnerable, ensured the Government's capacity to meet its human rights obligations, despite the absence of a single national human rights institution as envisaged in the Paris Principles. Those bodies were complemented by a robust network of NGOs and advocacy groups, and open media that played an important role in monitoring and reviewing the State's fulfilment of its obligations.

6. While preparing its third periodic report, his Government had taken careful note of the Committee's concluding observations and recommendations relating to the second periodic report. Those recommendations had included calls for measures to address domestic violence against women, improvements to the legal aid system, and improvements in the administration and conditions of State prisons, including the creation of an independent prison inspectorate. They had also called for the development of legislative measures to address perceived deficiencies in the legal framework for the protection of civil and political rights.

7. In that context, the Government had embarked on various legislative and policy measures, the most noteworthy being the entry into force of the Charter of Fundamental Rights and Freedoms on 8 April 2011. The Charter focused in particular on five fundamental rights and freedoms: protection from inhuman treatment; protection of freedom of the person; the right to due process; protection of property rights; and the right to freedom of religion.

8. Legislative developments for the protection of children included the Cybercrimes Act, which had entered into force on 17 March 2010, establishing legal sanctions for the criminal misuse of computer data, complementing legislation relating to child pornography and protecting children from cybercrimes. Jamaica had also ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and

child pornography, with effect from 26 August 2011. Furthermore, the Interception of Communications Act, referred to in paragraph 83 of the periodic report, had addressed the Committee's previous observation that the administrative rules for the use of wire-tapping were inadequate.

9. To support the National Policy for Gender Equality launched in March 2011, the Bureau of Women's Affairs had undertaken several initiatives, with funding assistance from UN-Women, including training and sensitization workshops to increase awareness of gender equality policy in both the public and private sectors. A link had also been established with key workplace policies, namely the HIV/AIDS Workplace Policy and the draft sexual harassment policy.

10. The Government reaffirmed its unwavering commitment to the promotion and protection of human rights for its citizens, and recognized that effective protection demanded compliance with and enforcement of the provisions contained in legislation. His delegation was ready to engage in an interactive dialogue with the Committee as an important means of enhancing ongoing efforts to discharge Jamaica's responsibilities under the Covenant.

11. In response to a request by the Chairperson, he gave a summary of his delegation's written replies, which were available in English only.

12. **The Chairperson** invited the Committee to take up questions 1 to 13 of the list of issues (CCPR/C/JAM/Q/3).

13. **Mr. Thelin** expressed disappointment at the lack of representatives from Jamaica's capital. Members of delegations from the capital were often best able to contribute detailed and up-to-date information in response to the Committee's oral questions.

14. Although the periodic report of Jamaica had been submitted late, it was most welcome. He wished to thank the various NGOs that had helped the Committee to prepare for its consideration of the report, particularly Jamaicans for Justice.

15. Noting that the Covenant was not directly applicable in Jamaica and that the Charter of Fundamental Rights and Freedoms was viewed as fulfilling some of the Covenant's functions, as detailed in the written replies to question 1 of the list of issues, he asked when that Charter had entered into force. The written replies also indicated that anyone could have recourse to the Supreme Court if they considered that their rights under the Charter or the Constitution had been violated. He asked whether other courts could address matters of fundamental rights and whether the courts were able, under the Jamaican system, to set aside a law that came into conflict with a superior law, such as the Constitution.

16. Expressing the Committee's concern, echoed by NGOs, that articles 76, 77 and 79 of the Offences Against the Person Act criminalized consensual sexual acts between adult males, he said that, contrary to the view maintained by the State party, as long as that provision remained in law it constituted a violation of the principle of non-discrimination enshrined in the Covenant. Given that fact, he encouraged the State party to reconsider its position on that point.

17. **Ms. Waterval**, noting that the State party's reply to question 2 was incomplete, asked for further details on the availability and effectiveness of remedies for individuals who claimed that there had been a violation of their rights. Despite the State party's position regarding the First Optional Protocol to the Covenant as stated in its written replies, she urged it to reconsider its denunciation of that Protocol.

18. Although reference had been made to a number of institutions in the replies to question 3, none of them was a national human rights institution as envisaged by the Paris Principles. Given that Jamaica had stated in its replies that it supported the Paris Principles,

she recommended that such an institution should be established to provide its citizens with improved protection of their rights. Regarding the various organizations listed in response to that question, it would be helpful if information could be provided on their mandates, budgets, levels of independence and human resources.

19. In relation to question 4, the Committee was concerned at reports it had received that people living with HIV/AIDS were not protected against discrimination and that the State party had failed to deliver on its repeated pledges to repeal outdated public health laws, such as the Quarantine Act and the Venereal Disease Act, which could lead to the detention of people living with HIV/AIDS without due process. Furthermore, cases of harassment and abuse of gay men by police officers had been reported to the Committee, as had several mob killings of lesbian, gay, bisexual and transgender (LGBT) persons for which no prosecutions had been brought. She asked what measures the State party was taking to address reports of killings and to improve protection from discrimination for sex workers and the LGBT community. Information on how improved access to HIV prevention and treatment would be provided to LGBT persons would also be appreciated.

20. **Mr. Neuman** said that the detailed response to question 6 reported significant success in increasing the number of women in positions of responsibility in the public sector. There was, however, limited progress in the political sphere and he wondered whether the State party had considered measures to encourage political parties to nominate more women, or changes to the electoral system that might result in higher representation of women.

21. Similarly, the Charter of Fundamental Rights and Freedoms appeared to address rights in the public sector but not in the private sector. Given that article 26 of the Covenant required States parties to provide equal and effective protection against discrimination in both sectors, it would be valuable to know how discrimination in the private sector was addressed elsewhere in the legal system.

22. Welcoming the Employment (Equal Pay for Men and Women) Act, he asked whether there was a more general prohibition of gender discrimination in the workplace that covered areas such as hiring, promotion and termination of contract, as well as legislation or bills covering all kinds of discrimination in various areas of the private sector. One particular issue was sexual harassment in the workplace, which did not appear to be prohibited by law: further details on the State party's plans in that respect would be appreciated.

23. Welcoming the information provided by Jamaica on literacy and school enrolment, he noted that a higher percentage of girls, as compared to boys, were enrolled in school up until the age of 12, at which point girls' enrolment dropped significantly and the situation was reversed. Could the delegation explain why that was the case and describe the measures being taken by the State party to address the matter?

24. The written replies stated that "the Government of Jamaica is opposed to discrimination or violence against homosexuals" (CCPR/C/JAM/Q/3/Add.1, para. 50), yet there appeared to be significant levels of discrimination against homosexuals both in law and in society. The criminalization of consensual sex between adults of the same gender conflicted with articles 17 and 26 of the Covenant, and the negative stance of legislation vis-à-vis sexual minorities encouraged the treatment of homosexuals as criminals and simultaneously discouraged victims of crime from coming forward. Recent amendments to the Constitution appeared to elevate the existing negative stance to a constitutional principle by excluding sexual orientation from the scope of the anti-discrimination clause, exempting sexual-offences legislation from the application of constitutional principles and prohibiting recognition of any legal union of same-sex partners, including those entered into abroad. Given that context, he asked what measures the State party was taking to

address the problems of discrimination and violence against sexual minorities, including training for police officers, public education aimed at increasing tolerance, and the systematic punishment of acts of discrimination and violence that were already prohibited under domestic legislation. Information was also requested on the State party's plans to bring its legislation into compliance with the Covenant by decriminalizing consensual sex between same-sex adults and expanding the legal protection against discrimination to include discrimination based on sexual orientation.

25. **Mr. Rivas Posada** said that the Committee took a keen interest in the civil unrest that had followed the announcement of the extradition of Michael Christopher Coke (Dudus) to the United States. Given that there had been a high number of victims of that unrest, both among civilians and the police, he requested further detailed information on the outcome of investigations into the events and on whether responsibility had been attributed to law enforcement officials who had been accused of using excessive force.

26. The Government had stated in the written replies that 263 people had reportedly been killed by the police in 2009 (CCPR/C/Q/3/Add.1, para. 61) and that investigations were ongoing. He requested updated information on the findings of those investigations.

27. The Committee was also interested in the investigating bodies that attributed responsibility in cases of extrajudicial killings allegedly perpetrated by the police, and was pleased to note the establishment of the Independent Commission of Investigations. It would welcome further information about that body and the standards it employed to obtain genuine results from investigations and to combat strong public perceptions of police impunity.

28. Noting that Jamaica was, like many States, a victim of the effects of drug trafficking and was therefore obliged to take all possible measures to reduce those effects, he encouraged the State party to continue developing policies in that area. Similarly, it should continue its investigation into the death of human rights defender Lenford "Steve" Harvey and bring those responsible to justice.

29. While the Committee recognized that the death penalty was not prohibited by international instruments, it nonetheless encouraged States parties to take steps to abolish it. Given that there was a de facto moratorium on capital punishment in Jamaica, the Committee would encourage the State party to continue to discuss the full abolition of capital punishment. The abolition, in 2005, of mandatory death sentences for the crime of capital murder was most welcome.

30. There was no doubt that the criminalization of abortion had a negative impact on respect for the right to life; it endangered women's lives by forcing them to have recourse to clandestine abortions. The State party's estimation that three or four deaths resulted from abortions every year was barely credible, as that figure was much lower than in all other countries where abortion was illegal. It was likely that many cases went unreported because abortion was illegal. While it was apparent that women who underwent abortion in the State party were criminally responsible, he requested clarification of whether those who performed and assisted with abortions could also be prosecuted.

31. **Mr. Salvioli** said that the State party should seriously consider re-accession to the First Optional Protocol to the Covenant, particularly given its stated commitment to respecting human rights and fulfilling its international obligations. Withdrawal from the Protocol had undoubtedly been a step backwards and was unacceptable in terms of the progressive realization of human rights. Moreover, its reasons for withdrawing from the Protocol no longer pertained.

32. Given that it was not possible to invoke the provisions of the Covenant before domestic courts, he failed to understand how the State party complied with article 2 of the

Covenant requiring States parties to give effect to the rights recognized in it. That was compounded by the fact that judges in those courts could not invoke the Committee's interpretation of those provisions, as expressed in its jurisprudence. He would welcome the delegation's comments on that issue.

33. **Sir Nigel Rodley** said that he was loath to raise questions relating to the performance under the Covenant of States that had previously been under British control, especially when there was a negative legacy left by the colonial Power, in the present case, the death penalty and corporal punishment. Nonetheless, it was now 49 years since the State party's independence; maybe after 50 years, some of that legacy might really become a thing of the past, particularly so long after the colonial Power itself had deemed it appropriate to review those issues. A moratorium on the death penalty was potentially a positive step since, by definition, it meant that people were not being executed. However, it would be interesting to know more about the status of the moratorium. Was it simply a statement by the Government that it would commute sentences, or merely a decision, announced or unannounced, not to confirm sentences? He asked whether the moratorium was considered to be informal and unofficial or formal and official, since that would help prisoners on death row to ascertain their fate rather than leaving them in a temporary and arbitrary situation.

34. Between 1957 and 1965, the year of formal abolition, the United Kingdom had learned that having the death penalty for what had at the time been called "felony murder" (equivalent to the act referred to in paragraph 77 (f) of the State party's written replies) had led to additional arbitrariness, given that many other serious offences were committed which did not lead to the death penalty. It would be interesting to know what attempts had been made to review the application of the death penalty to murder in the furtherance of various other crimes and how that had functioned in practice in the State party. He welcomed the decision to end the mandatory use of the death penalty in 2005.

35. He noted that the State party did not intend to ratify the Second Optional Protocol to the Covenant or to amend its Constitution in order to abolish the death penalty and that, in November 2008, Parliament had voted to retain the death penalty. The fact that a legislature, perhaps responding to public opinion, decided on a particular course of action was not of itself conclusive evidence of its appropriateness in terms of international standards. In that connection, the State party's current reasons for not re-acceding to the First Optional Protocol remained unclear. Given that the Committee, applying the Covenant as it must, was not per se against the death penalty, it was not the existence of the death penalty in the State party that had led it to come to decisions that had found violations of the Covenant. Rather, it was the outcomes of the process that had resulted in the imposition of death sentences in Jamaica that had led it to finding a violation. Now that the mandatory death penalty was no longer in place, and other measures had apparently been taken to try to improve the legal system, it would seem desirable for the State party to consider re-acceding to the First Optional Protocol. He urged the State party to pursue that course.

36. The Committee had raised concerns about the State party's use of corporal punishment in November 1997. The third periodic report, dated October 2009, included reference to the possibility of legislation to abolish corporal punishment and the written replies mentioned a private bill introduced in October 2010. Given that a year had passed since that date, he wished to know whether the State party had any more concrete developments to report, both on law and on fact. Given that the references to corporal punishment in the written replies focused on the education, family and childcare environments only, he asked whether corporal punishment was no longer being imposed by the courts. If not, the private bill was not necessarily sufficient to address the problem.

37. **Mr. Lallah** requested clarification as to whether the Constitution had been amended in order to introduce the Charter of Fundamental Rights and Freedoms, which had replaced

chapter III. It would appear that constitutional amendment required a vote of two thirds of all members of Parliament and possibly a referendum. He therefore asked whether the Charter had been passed by a two-thirds majority of members and had been the subject of a referendum. He asked why the Charter used the terminology “freedom from discrimination on the ground of being male or female”, whereas section 13 of the Constitution — the first part of chapter III — employed the term “sex”. It would be useful to know why the terminology had been changed.

38. He asked who appointed Public Defenders, how long their tenure of office lasted, and what powers they had when faced with an individual who had sustained injustice or suffered an infringement of his or her constitutional rights. It would also be interesting to learn what action the Independent Commission of Investigations (INDECOM) could take in those circumstances. In the hypothetical case of a complaint of police brutality, did INDECOM refer the matter to the Office of the Public Defender or take action itself? Was the Office of the Public Defender bound by investigations conducted by INDECOM? Had such issues arisen in practice and if so, who resolved the conflict between the two institutions?

39. **Mr. Flinterman** asked whether the prohibition of abortion was absolute or whether the law provided for exceptions, such as when the life of the mother was at risk if she did not abort or when the pregnancy was the result of rape. He also wished to know whether persons who conducted clandestine abortions that resulted in the death of pregnant women were prosecuted. It would be useful to know what level of urgency was felt in the ongoing discussions in Parliament on finalizing a policy on abortion and determining whether to legally allow safe abortion.

40. **Mr. Iwasawa** said that, while he understood that the Covenant could not be directly invoked in the State party’s domestic courts, it would be useful to know whether judges could refer to the Covenant, the Committee’s general comments, its jurisprudence and other international human rights instruments in interpreting the Charter of Fundamental Rights and Freedoms.

The meeting was suspended at 5.05 p.m. and resumed at 5.20 p.m.

41. **Mr. McCook** (Jamaica) said that his delegation was not currently in a position to comment further on the adoption and application of the Covenant in domestic law. However, he pointed out that the Covenant itself did not oblige States parties to enact its provisions, but rather to take the necessary steps to adopt such laws or other measures in order to give effect to the rights recognized in it. While taking note of the Committee’s concerns about the adequacy of some domestic laws to give effect to the provisions of the Covenant, his Government was satisfied that it was fulfilling its obligations under the Covenant.

42. The Charter of Fundamental Rights and Freedoms had entered into force on 8 April 2011 and had now replaced section 13 of the Constitution.

43. Corporal punishment as a sentence for a criminal offence had been declared unconstitutional in 1998 by the Court of Appeal in its judgement in the case brought against the Government by Noel Samuda and Walford Ferguson. Having been sentenced to be flogged in addition to terms of imprisonment, they had argued that flogging constituted inhuman and degrading punishment, and the Court had declared that corporal punishment was unlawful as a sentence for an offence.

44. His delegation took note of the Committee’s opinion that the abolition of the mandatory death sentences would appear to remove the obstacle to its re-accession to the First Optional Protocol. However, the Government’s concerns were not limited to that single issue and its current position not to re-accede was unequivocal. Its decision to

withdraw from the Optional Protocol had not been taken lightly. One of the main considerations during the deliberations had been to ensure that Jamaican citizens continued to have access to appeal to a competent international body when faced with alleged violations of their civil and political rights, which they did under the Inter-American system. He took note of the specific provisions of the Optional Protocol and the enhanced access it would provide to Jamaican citizens. He recalled that, at the time of its withdrawal from the Optional Protocol in 1997, the Government had provided a considered explanation that demonstrated no disrespect for that instrument.

45. The Government was currently considering how it could establish a national human rights institution that would function in accordance with the Paris Principles. Further reflection was needed on whether the State could fully staff and fund a single national institution, particularly as several entities currently provided care and protection for the most vulnerable groups in Jamaican society.

46. Turning to the issue of persons who had been killed apparently because of their sexual orientation, he said that all acts of violence that resulted in assault or murder were subject to criminal investigation, prosecution and sanction. The cases mentioned would have been treated no differently.

47. The Government acknowledged that women were underrepresented in the legislature. Since the submission of the third periodic report, a woman had been appointed as Speaker of the House of Representatives. He recalled that the Government was committed to non-discrimination and the further empowerment of women and would continue to implement affirmative action to that end. Jamaica was also committed to the International Labour Organization principle of "equal pay for work of equal value". The Government was aware that there was currently a pay gap, with women earning 91.4 per cent of men's wages.

48. Currently, there were no plans to amend the Offences Against the Person Act. His delegation took note of the Committee's concerns in that regard, especially about the criminalization of consensual sexual relations between men.

49. The state of emergency had not been related to the handling of demonstrations. It had been declared in the context of a particular community's response to State authority and entry into the community during a hostile confrontation. The number of deaths of civilians and others who had not been members of the security forces was currently under investigation, in particular by the Public Defender. Foreign pathologists had been brought in to increase the country's capacity to deal with the investigative challenges.

50. In practice, the executive's independence was achieved by vesting entities with direct authority from the legislature. To the extent that the Office of the Public Defender and the Independent Commission of Investigations were entities of Parliament, they were deemed to be sufficiently independent. He asked whether his delegation was correct in understanding that the Committee's question implied that such separation might not be considered adequate.

51. On the question of the death penalty, while no executions had taken place during the reporting period, there had been no declaratory position that they would not take place in the future. The Government had taken no affirmative measures to implement a stay of executions for any particular purpose.

52. Any person who had been found to have conducted or assisted in an abortion which had resulted in the death of a pregnant woman was subject to a criminal penalty by the courts.

53. **Mr. Salvioli** urged the State party to consider sending a delegation from the capital to its future meetings with the Committee in order to facilitate dialogue.

54. He pointed out that the American Convention on Human Rights differed significantly from the International Covenant on Civil and Political Rights, and the interpretations by the Inter-American Commission on Human Rights were different from those of the Human Rights Committee.

55. On the issue of the death penalty, in the case of *Pratt and Morgan v. Attorney General of Jamaica*, the Privy Council had clearly ruled that prolonged incarceration on death row constituted cruel, inhuman or degrading punishment. He requested clarification as to whether the new Charter of Fundamental Rights and Freedoms provided that the period spent on death row should not be taken into consideration in the determination of whether a detainee had suffered cruel, inhuman or degrading punishment.

56. **Mr. Thelin** said he failed to understand how the State party could argue that the retention of the criminalization of male homosexual conduct was compatible with the provisions of article 2, when read in conjunction with articles 17 and 26 of the Covenant. That might well be in accordance with the provisions of the new Charter, but it would appear to be a clear violation of the rights enshrined in those articles. Since Jamaican citizens could not avail themselves of the courts to redress that situation, it underscored the importance of bringing the State party's legal system into line with the obligations under article 2 of the Covenant.

57. **Sir Nigel Rodley** invited the delegation to comment on section 13 (8) of the Constitution, as amended by the Charter of Fundamental Rights and Freedoms, which provided that the execution of a death sentence that had been imposed after commencement of the Charter would not be held to be inconsistent with or in contravention of that section by reason of the length of time that had elapsed between the date on which the sentence had been imposed and the date on which it was executed. That appeared to be a constitutional attempt to reverse the ruling in the *Pratt and Morgan* case, which had put a presumption in favour of five years followed by commutation. He requested details of the process that had resulted in that subsection and expressed his concern that people could be on death row for up to 13 years in the State party.

The meeting rose at 6 p.m.