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**ADVANCE UNEDITED VERSION**Distr.: General  
2 December 2022

Original: English

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**Committee on the Elimination of Racial Discrimination****Concluding observations on the combined twenty-first to twenty-fourth reports of Jamaica\***

1. The Committee considered the combined twenty-first to twenty-fourth periodic reports of Jamaica,<sup>1</sup> submitted in one document, at its 2943rd and 2945<sup>th</sup> meetings,<sup>2</sup> held on 24 and 25 November 2022. At its 2952nd meeting, held on 1 December 2022, it adopted the present concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the combined twenty-first to twenty-fourth periodic reports of the State party. It also welcomes the constructive dialogue with the State party's high-level delegation and thanks the delegation for the information provided during the dialogue and for the additional written information submitted afterwards.

**B. Positive aspects**

3. The Committee welcomes the State party's ratification of International Labour Organization (ILO) Convention No. 189 (2011) concerning decent work for domestic workers on 11 October 2016.

4. The Committee further welcomes the following legislative, policy and institutional measures taken by the State party:

- (a) The establishment of the Inter-Ministerial Committee on Human Rights, in 2018;
- (b) The adoption of the National Policy on Poverty and the national Poverty Reduction Programme, in September 2017;
- (c) The appointment of the National Rapporteur on Trafficking in Persons, in 2015;
- (d) The National Development Plan: Vision 2030 Jamaica.

**C. Concerns and recommendations****Statistics**

5. The Committee takes note of the statistics provided by the State party in its report and during the dialogue on the ethnically diverse composition of its population, comprising persons of African, Indian, Chinese, Arabic and European descent. It also takes note that

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\* Adopted by the Committee at its 108<sup>th</sup> session (14 November – 2 December 2022)

<sup>1</sup> CERD/C/JAM/21-24.

<sup>2</sup> See CERD/C/SR.2943 and CERD/C/SR.2945.

Maroon has been included as a category in the census that is currently being conducted in the State party. However, the Committee remains concerned that the State party does not collect data on the socioeconomic situation of the various populations in the country, disaggregated by ethnic or national origin, including on Maroons, Tainos, Rastafaris and non-citizens, such as migrants, refugees and asylum seekers, limiting the Committee's ability to properly assess the equal enjoyment of all rights protected under the Convention by the different ethnic groups in the State party (arts. 1 and 5).

6. **Recalling its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention, its guidelines for reporting under the Convention<sup>3</sup> and its previous recommendations,<sup>4</sup> the Committee recommends that the State party collect and provide to the Committee updated and comprehensive statistics on the demographic composition of the population, based on the principle of self-identification, disaggregated by ethnic or national origin, including on Maroons, Tainos, Rastafaris and non-citizens, such as migrants, refugees, asylum-seekers and stateless persons, together with relevant socioeconomic indicators, that would enable an accurate assessment of progress towards the equal enjoyment by all groups, without discrimination, of the rights enshrined in the Convention.**

#### **Reservation**

7. The Committee remains concerned that the State party maintains a broad and vague reservation to the Convention, which states that ratification of the Convention by Jamaica does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligation to introduce judicial processes beyond those prescribed under the Constitution (art. 2).

8. **The Committee reiterates its recommendation that the State party re-examine its broad and vague reservation to the Convention, and urges the State party to withdraw it as it hinders the full implementation of the provisions of the Convention.<sup>5</sup>**

#### **Incorporation of the Convention into the domestic legal order**

9. Noting that the State party has a dualist legal system, the Committee is concerned that the State party has not taken sufficient and appropriate measures to incorporate the provisions of the Convention into its domestic law (art. 2).

10. **The Committee recommends that the State party incorporate all of the substantive provisions of the Convention into its domestic law, with a view to ensuring comprehensive protection against racial discrimination.**

#### **Prohibition of racial discrimination**

11. The Committee takes note of the information provided by the delegation of the State party that the Cabinet had approved the establishment of a Constitutional Reform Committee on 17 November 2022, which is expected to review and issue recommendations also on Chapter III of the Constitution concerning fundamental rights and freedoms. However, the Committee is concerned that section 13(3)(i)(ii) of the Charter of Fundamental Rights and Freedoms (Chapter III of the Constitution), which guarantees the right to freedom from discrimination, does not include all grounds enumerated in article 1 of the Convention, in particular descent, national or ethnic origin. It is also concerned that some of the rights enshrined in the Charter are constricted by saving law clauses. It also remains concerned that the State party has not yet adopted comprehensive anti-discrimination legislation, which contains a clear definition of racial discrimination and prohibits direct and indirect racial discrimination in both the public and private spheres. Moreover, it notes with particular concern that according to the State party, the absence of overt racism and racial discrimination in formal systems and structures in Jamaica explains the fact that there are no

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<sup>3</sup> CERD/C/2007/1.

<sup>4</sup> CERD/C/JAM/CO/16-20, para. 11 and CERD/C/60/CO, para. 9.

<sup>5</sup> CERD/C/JAM/CO/16-20, para. 6.

formal structures or mechanisms specifically established for their elimination (arts. 1, 2, 5 and 6).

12. **The Committee recommends that the State party seize the opportunity presented by the constitutional reform process in order to incorporate into the Charter of Fundamental Rights and Freedoms a comprehensive list of grounds of discrimination, including all those set out in article 1 of the Convention, and to review the saving law clauses. It also reiterates its recommendation that the State party adopt comprehensive anti-discrimination legislation that contains a clear definition of racial discrimination and encompasses direct and indirect discrimination in both the public and private spheres, in accordance with article 1 of the Convention.<sup>6</sup> The Committee, considering that no country is free from racial discrimination, further recommends that the State party adopt appropriate measures to establish mechanisms with the mandate to prevent and combat racial discrimination. It further recalls its concluding observations of 2002, in which the Committee, *inter alia*, encouraged the State party to reconsider its position concerning the absence of racial discrimination in its territory.<sup>7</sup>**

#### **Intersecting forms of discrimination**

13. The Committee notes that according to the State party there is no evidence of significant problems of racial discrimination in Jamaica. With regard to the intersectionality on grounds of class and race, it notes that according to the State party classism is more prevalent than racism in Jamaica and that the challenges of overcoming the residual effect of slavery on the society in equating skin colour with opportunities for social mobility is combated through public education. However, it is concerned by reports about the persistence of socio-economic disadvantages related to skin colour, which affects mainly darker skin Jamaicans on educational attainment, income and standard of living. It is also concerned by reports of incidents of discrimination against darker skin Jamaicans in employment and hiring practices, in particular in restaurants and the tourism sector. The Committee is further concerned by reports on intersecting forms of discrimination based on race, colour or ethnic origin and other grounds such as class, in relation to limitations on beach access, as well as to restrictions imposed by some schools on the admission of students wearing certain hairstyles, *inter alia* braids, beads or locks, which have a disparate impact on students of African descent (arts. 1, 2 and 5).

14. **The Committee recommends that the State party take legislative and policy measures to combat all forms of racial discrimination, as established in article 1 of the Convention, including when they intersect with other grounds of discrimination. In particular, it recommends that the State party:**

(a) **Conduct research on the persistence of socio-economic disadvantages related to race and skin colour, in particular with regard to educational attainment, income and standard of living, with a view to adopting all necessary measures to address any form of social inequality based on direct, indirect or intersecting forms of discrimination on the grounds of race and skin colour and other grounds such as class;**

(b) **Strengthen the mechanisms to prevent and investigate incidents of racial discrimination, including on the grounds of race and skin colour, in employment and hiring practices, in particular in restaurants and the tourism sector;**

(c) **Review the Beach Control Act of 1956 and accelerate the adoption of the National Beach Policy, and ensure that their content and implementation does not result in direct, indirect or intersecting forms of discrimination on the grounds of race, skin colour, ethnic origin and other grounds such as class;**

(d) **Ensure that the policy with respect to dress and grooming that is currently being developed eradicates school's admission policies regarding hairstyles that discriminate or have a disparate impact on students of African descent.**

<sup>6</sup> CERD/C/JAM/CO/16-20, para. 7.

<sup>7</sup> CERD/C/60/CO, para. 5.

### National human rights institution

15. The Committee takes note of the information provided by the State party on the steps taken towards the establishment of a national human rights institution. However, the Committee reiterates its concern about the absence of an independent national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

**16. Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, and its previous recommendation,<sup>8</sup> the Committee recommends that the State party expedite the process towards the establishment of an independent national human rights institution in line with the Paris Principles and with a mandate to combat racial discrimination. The Committee also recommends that the State party ensure effective, meaningful and inclusive participation and consultation with all relevant stakeholders in that process, in particular with civil society organizations, including organizations representative of the groups most exposed to racial discrimination.**

### Implementation of article 4 of the Convention

17. While taking note of the amendment to the Offences against the Person Act to address incitement to commit acts of violence, adopted in 2014, the Committee is concerned that this amendment does not explicitly include racially motivated violence. The Committee also regrets the position of the State party that the prohibition contained in article 4(a) of the Convention could infringe the constitutional guarantee of freedom of expression. Furthermore, the Committee reiterates its concern that there is no domestic legislation in the State party giving full effect to all the provisions of article 4 of the Convention (art. 4).

**18. The Committee recalls its general recommendation No. 15 (1993) on article 4 of the Convention, which states that all the provisions of article 4 of the Convention are of a mandatory and preventive nature. It also recalls its general recommendation No. 35 (2013) on combating racist hate speech, according to which the relationship between proscription of racist hate speech and the flourishing of freedom of expression should be seen as complementary and not the expression of a zero-sum game where the priority given to one necessitates the diminution of the other. Accordingly, the Committee reiterates its previous recommendations that the State party adopt specific legislative, administrative and other measures, which give full effect to all provisions of article 4 of the Convention.<sup>9</sup>**

### Situation of ethnic and ethno-religious groups

19. The Committee notes the State party's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples. It also notes that the State party consider that there are no Indigenous Peoples in Jamaica while it recognizes Maroon and Taino as indigenous cultures to Jamaica. The Committee is concerned that this approach could marginalize communities within the State party that self-identify as Indigenous Peoples and could maintain or intensify situations of direct, indirect, multiple and intersecting forms of discrimination faced by them (art. 5).

**20. Recalling its general recommendations No. 8 (1990) and No. 23 (1997) on the rights of Indigenous Peoples, the Committee recommends that the State party (a) reconsider its approach with regard to Indigenous Peoples giving due account to the principle of self-identification, and (b) engage in open and inclusive discussions with Maroon and Taino communities on this matter.**

21. The Committee notes the information provided by the delegation of the State party regarding the provision of financial and logistical support to Maroon communities for their festivals and development initiatives. However, it is concerned by reports about the negative impact of bauxite mining activities in Cockpit Country on the ecosystem, on the traditional lands of the Maroon communities that live there and on the health of the members of these

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<sup>8</sup> CERD/C/JAM/CO/16-20, para. 8.

<sup>9</sup> CERD/C/JAM/CO/16-20, para. 10 and CERD/C/60/CO, para. 6.

communities. It is also concerned about allegations according to which affected Maroon communities have not been involved or consulted in the decision-making processes related to the bauxite mining projects (art. 5).

**22. The Committee recommends that the State party adopt all measures necessary to prevent any harmful impact of mining activities on the ecosystem, the traditional lands and the health of the Maroon communities of Cockpit Country, including through the establishment of procedures and mechanisms to ensure their meaningful, effective and inclusive participation and consultation in the decisions that could affect them. It further recommends that the State party take appropriate steps to guarantee that affected communities by mining activities have access to effective legal remedies.**

23. The Committee notes that the Prime Minister of the State party issued an official apology to the community of Rastafari in April 2017 for the Coral Gardens incident of April 1963, which resulted in the death and the imprisonment of members of the Rastafari community. It also notes that the State party established a Trust Fund for the survivors of this incident. Nevertheless, the Committee is concerned by reports that members of the Rastafari community are affected by racial profiling as they are more likely to be stopped and checked by law enforcement officers in the context of police drug operations and by allegations that in some instances their dreadlocks have been forcibly cut whilst in detention. It is further concerned about reports on the limited participation of Rastafari communities in the State party's efforts to protect Rastafari intangible cultural heritage (arts. 4 and 5).

**24. Recalling its general recommendation No. 36 (2020) on preventing and combatting racial profiling by law enforcement officials, the Committee recommends that the State party adopt and effectively implement laws and policies that define and prohibit racial profiling by law enforcement officials. It also recommends that the State party provide mandatory training to law enforcement officials in order to counter biased policing, including in relation to drug policing, and abuses against ethno-religious groups such as the Rastafari. It further recommends that the State party redouble its efforts to ensure meaningful, effective and inclusive participation of Rastafari communities in decisions that affects them.**

#### **Situation of non-citizens, including migrants, refugees, asylum seekers and stateless persons**

25. While noting the information provided by the delegation of the State party that the Immigration Restriction (Commonwealth Citizens) Act and the Aliens Act are currently under review, the Committee shares the concerns expressed by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families<sup>10</sup> that these acts, and the Deportation (Commonwealth Citizens) Act, criminalize irregular immigration (art. 5).

**26. The Committee recommends that the State party adopt all measures necessary towards the decriminalization of irregular immigration, including by repealing or amending the Immigration Restriction (Commonwealth Citizens) Act, the Aliens Act and the Deportation (Commonwealth Citizens) Act. The Committee draws the State party's attention to the recommendation made on this matter by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families in 2017.<sup>11</sup>**

27. The Committee takes note of the information provided by the State party on the measures adopted to protect the rights of asylum seekers and refugees, such as the national Refugee Policy of 2009. However, the Committee is concerned about the absence of national legislation on the protection of asylum seekers and refugees and on the procedure for status determination. It is also concerned about the lack of information regarding the measures adopted to eradicate statelessness in the State party (art. 5).

**28. Recalling its general recommendation No. 22 (1996) on refugees and displaced persons in the context of article 5 of the Convention, the Committee recommends that**

<sup>10</sup> CMW/C/JAM/CO/1, para. 12.

<sup>11</sup> CMW/C/JAM/CO/1, para. 13.

**the State party enact comprehensive legislation on the protection of the rights of refugees and asylum seekers, which includes fair procedures for the consideration of asylum applications and for the determination of refugee status. It also recommends that the State party adopt comprehensive legislation to eradicate statelessness, which includes procedures for the determination of statelessness, and consider acceding to the 1954 Convention relating to the Status of Stateless Persons.**

#### **Trafficking in persons**

29. The Committee notes the measures adopted by the State party to prevent and combat trafficking in persons, such as the appointment of the National Rapporteur on Trafficking in Persons, in 2015. Nevertheless, it is concerned about the lack of detailed information on the measures adopted to improve the identification of victims of trafficking among migrants, refugees and asylum seekers, and on assistance and rehabilitation services provided to them. It is also concerned about reports indicating the lack of adequate human and financial resources allocated to the Office of the National Rapporteur on Trafficking in Persons (art. 5).

**30. The Committee recommends that the State party strengthen the measures adopted for the early identification of victims of trafficking among migrants, refugees and asylum seekers and for their referral to appropriate services for their assistance and rehabilitation. It also recommends that the State party allocate adequate human and financial resources to the Office of the National Rapporteur on Trafficking in Persons.**

#### **Complaints of racial discrimination**

31. The Committee notes the information provided by the State party that the Office of the Public defender has not received complaints about discrimination based on race. The Committee is concerned about the lack of information on complaints or cases involving direct or indirect discrimination on the grounds of race, skin colour, descent, or national or ethnic origin in the State party, as well as on investigations, prosecutions, convictions, sanctions imposed by domestic courts and on reparations and redress provided to victims (arts. 2 and 6).

**32. The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recalls that an absence of complaints and legal action relating to racial discrimination does not mean there is an absence of racial discrimination in a State party, but that it may reveal a lack of suitable legislation, poor awareness of the legal remedies available, a lack of trust in the judicial system, a fear of reprisals or a lack of will on the part of the authorities to prosecute the perpetrators of such acts. Recalling its previous recommendation,<sup>12</sup> the Committee recommends that the State party:**

**(a) Adopt measures, with a clear time frame, to assess the effectiveness of remedies available to victims of racial discrimination, including by conducting surveys and collecting information on discrimination on the grounds of race, skin colour, descent, or national or ethnic origin, and in doing so ensure effective, inclusive and meaningful consultation with and participation of civil society organizations, including organizations representative of the groups most exposed to racial discrimination;**

**(b) Conduct training programmes for law enforcement officials, prosecutors, judges and other public officials on the identification and registration of incidents of racial discrimination;**

**(c) Undertake public education campaigns on the rights enshrined in the Convention and on how to file complaints of direct or indirect discrimination on the grounds of race, skin colour, descent, or national or ethnic origin;**

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<sup>12</sup> CERD/C/JAM/CO/16-20, para. 9.

(d) **Establish a mechanism for collecting statistics on complaints of racial discrimination as well as on investigations, prosecutions, convictions and the sanctions imposed, and on the reparations provided to victims, disaggregated by age, gender and ethnic or national origin, and include those statistics in its next periodic report.**

#### **Education and training to combat racial discrimination**

33. The Committee takes note of the information provided by the delegation of the State party that the National Council on Reparation include an Internal Reparatory Justice Programme, which recognises that there are areas in which the State party must examine its own actions towards its own people, and that it is currently developing a reparation policy. It also takes note that this National Council, in consultation with the Ministry of Education, has begun a programme to reform the school curriculum in relation to the historical past of the country and the necessity for equal treatment of various ethnic groups. While noting that the standard education curriculum includes human rights issues, the Committee is concerned about the lack of detailed information on the coverage in the school curriculum of the fight against discrimination based on race, skin colour, descent, national or ethnic origin and on the rights enshrined in the Convention (art. 7).

34. **The Committee recommends that the State party continue its efforts to incorporate human rights education in the school curriculum at all levels, in particular with regard to the Convention and the fight against racial discrimination, and on the history and culture of the various ethnic groups in the country, while promoting their effective, inclusive and meaningful participation in the current process of school curriculum reform.**

#### **Civil society involvement**

35. The Committee regrets the lack of participation of non-governmental organizations during the process of elaboration of the State party's report and the low number of them involved in the preparatory process for the review of the State party's report.

36. **The Committee recommends that the State party increase its efforts to involve and consult with non-governmental organizations working in the area of human rights protection, in particular those working to combat racial discrimination, including organizations representative of the groups most exposed to racial discrimination, in the process of implementation of the concluding observations and in the preparatory process for the review of its next periodic report.**

### **D. Other recommendations**

#### **Ratification of other treaties**

37. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. The Committee also encourages the State party to consider ratifying the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the Convention for the Protection of All Persons from Enforced Disappearance.**

#### **Declaration under article 14 of the Convention**

38. **The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.**

#### **Follow-up to the Durban Declaration and Programme of Action**

39. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

#### **International Decade for People of African Descent**

40. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies in collaboration with organizations and peoples of African descent. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

#### **Dissemination of information**

41. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly made available to all State bodies entrusted with the implementation of the Convention, including Municipal Corporations, and publicized on the website of the Ministry of Foreign Affairs and Foreign Trade in the official and other commonly used languages, as appropriate.

#### **Common core document**

42. The Committee encourages the State party to update its common core document, which dates to 6 January 1997, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006.<sup>13</sup> In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.

#### **Follow-up to the present concluding observations**

43. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 20(b) (Situation of ethnic and ethno-religious groups), 30 (Trafficking in persons), and 32(b) and (c) (Complaints of racial discrimination) above.

#### **Paragraphs of particular importance**

44. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12 (Prohibition of racial discrimination), 16 (National human rights institution) and 26 (Situation of non-citizens, including migrants, refugees, asylum seekers and stateless persons) above and

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<sup>13</sup> HRI/GEN/2/Rev.6, chap. I.



requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

**Preparation of the next periodic report**

45. The Committee recommends that the State party submit its combined twenty-fifth to twenty-ninth periodic reports, as a single document, by 4 of July 2026, taking into account the reporting guidelines adopted by the Committee during its seventy-first session<sup>14</sup> and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

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<sup>14</sup> CERD/C/2007/1