



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
23 September 2013

Original: English

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined sixteenth to twentieth periodic reports of Jamaica, adopted by the Committee at its eighty-third session (12-30 August 2013)

1. The Committee considered the sixteenth to twentieth periodic reports of Jamaica (CERD/C/JAM/16-20), submitted in one document, at its 2249th and 2250th meetings (CERD/C/SR.2249 and 2250), held on 21 and 22 August 2013. At its 2260th meeting, held on 29 August 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission by the State party of the combined sixteenth to twentieth periodic reports, albeit with a delay of eight years. While it regrets the limited information provided in the report, including with respect to follow-up to its previous concluding observations, the Committee welcomes the opportunity to renew its dialogue with the State party.

3. The Committee also appreciates the focused dialogue with the delegation of the State party.

B. Positive aspects

4. The Committee welcomes the ratification by the State party of the following international human rights instruments during the period under review:

(a) United Nations Convention against Transnational Organized Crime and its Protocols, namely, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, in 2003;

(b) United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education, in 2006;

(c) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2008;

(d) 1961 Convention on the Reduction of Statelessness, in 2013.

5. The Committee also notes other initiatives taken by the State party to promote human rights and the implementation of the rights enshrined in the Convention, such as:

- (a) The adoption of the National Cultural Policy, containing a chapter on the promotion of cultural diversity, in 2003;
- (b) The establishment of the Office of the Children's Advocate pursuant to the adoption of the Child Care and Protection Act, in 2004;
- (c) The enactment of the Trafficking in Persons (Prevention, Suppression and Punishment) Act of 2007 and the establishment of a National Task Force against Trafficking in Persons within the Ministry of National Security, in 2005;
- (d) The adoption of national refugee policy to strengthen the ad hoc framework for the determination of refugees, in 2009;
- (e) The establishment of the Independent Commission of Investigations (INDECOM) pursuant to the adoption of the Independent Commissions of Investigations Act of 2010.

C. Issues of concern and recommendations

Broad reservation to the Convention

6. The Committee expresses concern at the broad and vague reservation to the Convention that still remains in place and which, inter alia, 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" (arts. 2 and 6).

The Committee recommends that the State party re-examine its broad and vague reservation to the Convention, and consider withdrawing it to ensure that the provisions of the Convention are fully applicable in the State party.

Absence of legislation on racial discrimination

7. While noting the adoption of the Charter of Fundamental Rights and Freedoms, in 2011, which, inter alia, guarantees the right to equality before the law (Section 13(3)(g)) and the right to freedom from discrimination on the ground of race, place of origin, social class, colour, religion or political opinions (Section 13(3)(i)), the Committee remains concerned that the State party has yet to adopt comprehensive anti-discrimination legislation containing a clear definition of racial discrimination as required under the Convention (arts. 1, 2 and 6).

The Committee calls upon the State party to adopt comprehensive anti-discrimination legislation containing a clear definition of direct and indirect forms of racial discrimination that covers all fields of law and public life, in accordance with article 1, paragraph 1, of the Convention.

Independent national human rights institution

8. While taking note of the information provided by the State party that efforts are being made to establish a human rights unit within the Ministry of Justice, the Committee expresses concern at the absence of an independent national human rights institution to ensure that the international human rights obligations of Jamaica are fully implemented at the national level (arts. 2 and 6).

The Committee recommends that the State party establish an independent and effective national human rights institution in accordance with the Principles relating to the status of national institutions (the Paris Principles), and requests that the State

party provide information in its next periodic report on the progress achieved in this regard.

Court cases on racial discrimination

9. The Committee notes the absence of court cases on indirect or direct discrimination based on race, colour descent, or national or ethnic origin, which may reflect the public's lack of awareness concerning the rights under the Convention or domestic law prohibiting discrimination or the availability of judicial remedies, the public's lack of confidence in police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination (arts. 2 and 6).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee encourages the State party to take effective measures to:

(a) **Ensure that the lack of court cases on racial discrimination is not due to victims' lack of awareness of rights, individuals' lack of confidence in police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination;**

(b) **Disseminate information to the public regarding available protection and remedies against violations of the Convention;**

(c) **Sensitize law enforcement officials and members of the judiciary to the provisions of the Convention.**

Implementation of article 4 of the Convention

10. While taking note of the fact that Section 30(d) of the Television and Sound Broadcasting Regulations of 1996 prohibits broadcasting of "indecent and profane" materials, and that bans have been imposed on songs which promote violence, the Committee reiterates its concern that there is no domestic legislation giving full effect to article 4 of the Convention (arts. 2, 4 and 6).

The Committee reiterates its previous recommendation (CERD/C/60/CO/6, para. 6) to adopt specific legislative, administrative and other measures which give effect to article 4 of the Convention, in accordance, inter alia, with the Committee's general recommendation No. 7 (1985) on legislation to eradicate racial discrimination and general recommendation No. 15 (1993) on article 4 of the Convention.

Absence of disaggregated data

11. While taking note of the ethnically diverse population of the State party, comprising persons of African, Indian, Chinese, Lebanese and European descent, including the German community in Seaford Town, as well as the Maroons, the Committee regrets the absence of information from the State party on the socioeconomic situation of such groups, which creates an obstacle to identifying and rectifying situations of inequality (arts. 1 and 5).

The Committee recommends that the State party establish a mechanism for systematic and consistent data collection, based on the principle of self-identification, in order to assess the situation of persons on the basis of colour or descent, including in areas such as education, employment, housing and representation in Government. In this regard, the Committee refers the State party to its general recommendation No. 8 (1990) on the interpretation and application of article 1 of the Convention and the revised treaty-specific reporting guidelines (CERD/C/2007/1, para. 11), and requests that such information be provided in its next periodic report.

Asylum seekers and refugees

12. While welcoming the adoption of a national refugee policy in 2009, the Committee expresses concern at the information received that asylum seekers and refugees lack identity documentation to ensure the effective enjoyment of their rights, and that employers are often unaware of the fact that they do not need a work permit to take up employment. It is also concerned by reports that immigration officers failed to effectively screen Haitian nationals who arrived in the State party in February 2013 prior to their repatriation (art. 5).

The Committee recommends that the State party:

(a) **Take effective measures to issue asylum seekers and refugees with refugee documents or other identity cards that are recognized in the State party in order to ensure that their rights are fully guaranteed in practice;**

(b) **Ensure that employers are aware of the fact that refugees do not need a work permit to take up employment; and**

(c) **Ensure that all asylum seekers and refugees are effectively screened to verify their individual protection needs prior to repatriation, including in cooperation with the United Nations High Commissioner for Refugees.**

Involvement of civil society

13. The Committee reiterates its regret at the lack of information in the State party's report concerning the contribution of civil society organizations in the promotion of ethnic harmony and raising awareness about the Convention (art. 7).

The Committee requests the State party to provide in its next periodic report information on activities undertaken by civil society organizations to promote ethnic harmony and to raise awareness about the Convention.

D. Other recommendations

Ratification of other treaties

14. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties containing provisions that have a direct bearing on racial discrimination, such as International Labour Organization (ILO) Conventions No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and No. 189 (2011) concerning decent work for domestic workers.

Follow-up to Durban Declaration and Programme of Action

15. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that 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, and take into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. 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.

Dissemination

16. 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 observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

17. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 6, 8 and 12 above.

Paragraphs of particular importance

18. The Committee also wishes to draw the State party's attention to the particular importance of the recommendations in paragraphs 7, 11 and 13, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

19. The Committee recommends that the State party submit its twenty-first to twenty-third periodic reports in a single document by 4 July 2016, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document, as per the harmonized guidelines on reporting (HRI/GEN.2/Rev.6, chap. I, para. 19).