INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
Twenty-seventh session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fourth periodic reports of States Parties due in 1982

Addendum

BAHAMAS

[25 August 1982]

The Commonwealth of The Bahamas acceded to the Convention on the Elimination of All Forms of Racial Discrimination on 4 September 1975 and is presently considering the adoption of additional legislative measures that will give effect to the Convention on the Suppression and Punishment of the Crime of Apartheid. Since the presentation of its second report, there have not been any additional legislative or judicial measures in The Bahamas pursuant to the Racial Discrimination Convention.

A section at the end of this Report addresses itself to some of the queries and comments made by the Committee and some of its members when the second periodic report of The Bahamas was examined by the Committee.

1/ The present report constitutes the third and fourth periodic reports of The Bahamas, due on 5 August 1980 and 5 August 1982 respectively, submitted in one document.

For previous reports submitted by the Government of The Bahamas and the summary records of the meetings of the Committee at which the reports were considered, see:

(1) Initial report - CERD/C/R.85/Add.4 (CERD/C/SR.349);

(2) Second periodic report - CERD/C/R.16/Add.3 (CERD/C/SR.438).

GE.82-17657
Demographic information on The Bahamas, based on the most recent census, is annexed (see Annex I). Relevant provisions of the Bahamas Constitution are contained in Annex II, and legislative provisions referred to below can be found in Annexes III, IV and V.

Article 2 of the Convention

The situation as described in the second report of The Bahamas in regard to article 2 remains unchanged.

Article 3

As stated above, The Bahamas has become a Party to the Convention on the Suppression and Punishment of the Crime of Apartheid and is presently considering the adoption of further legislative measures to give effect to its provisions.

The Government of The Bahamas does not maintain diplomatic, economic or other relations with the racist regime of South Africa.

Article 4

The situation as described in the second report of The Bahamas remains unchanged.

In connection with the consideration of the adoption of further legislative measures pursuant to the Convention on the Suppression and Punishment of the Crime of Apartheid, this article will be given consideration.

Article 5

The situation described in the second report of The Bahamas in regard to this article remains unchanged.

Article 6

The situation described in the second report of The Bahamas in regard to article 6 remains unchanged.

Article 7

The situation described in the second report of The Bahamas in regard to this article remains unchanged.

* * *

With the Committee's indulgence, the present report departs in form from the suggested guidelines to the extent that it is directed to the observations and comments made by the Committee and some of its members when the Second Periodic Report of The Commonwealth of The Bahamas was presented. Generally, with the exception of The Bahamas becoming a party to the Convention on the Suppression and Punishment of

2/ Annex I of the report is reproduced below. Annexes II, III, IV and V may be consulted by members of the Committee in the original (English) language in the files of the Secretariat.
the Crime of Apartheid, the situation in The Bahamas since its last Report remains basically unchanged. It is hoped that these explanations and clarifications will satisfy the Committee's concerns. The observations and comments of the Committee are contained in Document No. 18 (A/34/18) paragraphs 319-327 inclusive. Information will also, as appropriate, be provided on the fulfilment of the obligations of the Convention as they obtain in The Bahamas.

The protection and dignity of the human person is of vital importance to the Government of The Commonwealth of The Bahamas. In recognition of this, the Constitution of The Commonwealth of The Bahamas, which is the supreme law, enshrines the fundamental rights of the individual irrespective of race, ethnic origin, political opinion, colour, creed or sex, and religion.

The Government of The Commonwealth of The Bahamas is aware that the abhorrent practices of racial discrimination should have no place in today's international relations and has condemned these practices wherever they occur. It cannot be doubted that racism has existed historically in The Bahamas. Slavery has been an important historical phenomenon. Within the constraints of this report, various historical considerations can only be touched upon briefly and at a high level of generality.

As in other parts of the western hemisphere, African slaves were imported in the post-Columbian era as a source of cheap labour. The existence of slavery and its consequences are at the basis of an examination of the question of racism in the Bahamian context.

African slaves were brought to The Bahamas in the seventeenth century to sustain a plantation economy which eventually failed. By the early nineteenth century, conditions having changed materially, slavery was abolished. Every aspect of the lives of the former slaves, such as their livelihood and acquisition of skills, and the ownership of land, was fundamentally affected. But, governmental programmes were instituted at a very early stage to set the former slaves on their feet as free men. The two primary racial groups have traditionally been and continue to be black and white. Slavery, institutionalised for a significant period, has had an influence on racial relations, though not always in a negative sense. But, in the century and a half since the abolition of slavery, great strides have been taken to remedy its effects. Measures to maintain and improve harmonious relations among all racial groups have accelerated in the twentieth century.

Racism can be considered both in its institutionalised forms and as an attitude. Institutionalised racism in The Bahamas - not merely in the broad historical sense of slavery but also in terms of modern barriers to social, economic and political advancement of individuals and groups - has disappeared. After World War II, particularly in the mid-50's, the legislature turned its attention to breaking down remaining racial barriers in The Bahamas and to the removal of all institutionalised manifestations of racial discrimination. The momentum increased with the advent of majority rule in 1967, and reverse discrimination has not replaced the policies of the oligarchy which lost political power.

Indeed, it has been the deliberate and studied policy of the Government to ensure that there are constitutional guarantees against racial discrimination. This concern has been integrated into the constitutional development of The Bahamas. In particular, the framers of the Independence Constitution drafted the entrenched provisions cited in this report having in mind basic principles such as those
emunctuated in the Universal Declaration of Human Rights. For the framers of the Bahamas Constitution, it was vital that harmonious racial relations should be assured, as an essential component of the social, political and economic development of the country. Adherence to the International Convention on the Elimination of All Forms of Racial Discrimination is a reflection of this commitment to the eradication of racial discrimination domestically and internationally.

Racist attitudes are more intangible than their institutionalized forms. Thus, their adjustment can theoretically be a more difficult process. However, in the case of The Bahamas, both aspects have proceeded hand in hand. Over a long period, a high level of public consciousness opposed to racial discrimination in all its forms has undergone a most profound consolidation, both stimulated by and reinforcing the circumstances described in this report.

In his statement at the XXXVth Meeting of the General Assembly of the United Nations, the Minister of External Affairs clearly stated the policy of The Bahamas on racial discrimination, in particular the abhorrent practice of apartheid. He said:

"Nothing in modern world history has affronted the dignity of so many people in the world as the racial policies of the Government of South Africa. The overwhelming majority of the people of the world are at war with the soul of South Africa as it is presently governed. Outside of the African continent there is a perception that in South Africa a white racist minority discriminates and oppresses a black South African majority. That part of the picture is to be sure true but it is incomplete in so far as it is a perception which does not recognize that apartheid goes beyond discrimination and oppression. For the Government of South Africa enslaved as it is in the cocoon of its perversity, apartheid is a Religion, the soul of their nation which gives it strength, the psychology of its people which gives them courage and the culture which gives meaning to their existence. We ought not to underestimate the extent to which the Government of South Africa and the philosophy which it promotes, represents an acceptable symbol to powerful ethnic forces in the world who cling to the belief that some men are more equal than others.

Nothing I say ought to be interpreted to weaken our resolve to persist until this unique evil is destroyed but the philosophy of apartheid and its fellow travellers will not be destroyed unless we are collectively prepared to revise some of our tactics in order to achieve our objective. Most important of all we have to destroy the illusion which is sought to be created that South Africa is governed by normal, people capable of conventional reason and intelligence and that in the fullness of time their own enlightened self-interest will force change upon them, for it will never happen that way. We ought never to indulge in the self-delusion that there are conventional means by which apartheid will be renounced and abandoned voluntarily by South Africa because they will ultimately come to the conclusion that that is the right thing to do.

The South African Government's religion and philosophy can only survive too because it has so many friends to give them aid and comfort outside of South Africa. The war against apartheid must therefore be intensified outside of South Africa against people who are capable of reason and intelligence and who ought to know what is enlightened self-interest".
In this connection, the Committee may also wish to note that The Bahamas has acceded to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

1. Paragraph 319 of Supplement No. 18 (A/34/18). The observation that "The Bahamian Constitution apparently prohibited racial discrimination and that the next report of the Government of The Bahamas should indicate what guarantees existed for the implementation of the statements of principle contained in the Second Report".

The relevant provisions of the Constitution of The Commonwealth of The Bahamas do not only appear to prohibit racial discrimination but they do so in fact.

The protection of the Fundamental Rights and Freedoms of the Individual are contained in Chapter III of the Constitution. Section 15 of Chapter III provides:

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

(a) life, liberty, security of the person and the protection of the law,
(b) freedom of conscience, of expression and of assembly and association; and
(c) protection for the privacy of his home and other property and from deprivation of property without compensation".

Sections 16-27 (inclusive) of Chapter III further enumerate these rights. They include: protection to the right of life, protection from inhuman treatment, protection from slavery and forced labour, protection from arbitrary arrest or detention, provisions to secure the protection of the law, protection for privacy of home and other property, protection of freedom of assembly and association, protection of freedom of movement, protection from discrimination on the grounds of race, religion, etc., and protection from deprivation of property.

The rights contained in Sections 16-27 inclusive are not imperfect rights. They are enforceable by the Supreme Court of The Commonwealth of The Bahamas. In this connection, Section 28 (1) of the Constitution provides for the enforcement of these rights:

Section 28 (1) states as follows:

"If any person (emphasis added) alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress".

From this section it will be clear that constitutional guarantees do exist in the Constitution of The Commonwealth of The Bahamas for the implementation not only of a statement of principle condemning racial discrimination, but the implementation of provisions of the Convention itself.
2. Paragraph 320 of Supplement No. 16 (A/34/18). The observation that "the problems which had arisen in connection with the implementation of the Convention are attributable to the reservations the Government had made when acceding to the Convention and that The Bahamas might consider withdrawing the reservation".

There are three elements in the reservation, made by The Bahamas upon its accession to the Convention, i.e.,:

(i) That the Government interprets Article 4 of the Convention as imposing the obligation to adopt additional legislation in the fields covered by (a), (b), (c) of Article 4 only in so far that it may consider such legislation necessary for the attainment of the aims specified in Article 4 of the Convention.

(ii) That the Constitution prescribes judicial process to be observed in the event of the violation of the fundamental rights of the individual.

(iii) That acceptance of the Convention does not imply obligations going beyond the Constitutional limits nor the acceptance of any obligation to introduce judicial process beyond those prescribed under the Constitution.

The Bahamas does not consider its reservation an impediment to its obligation to fulfill its obligations pursuant to its becoming a party to the Convention. With regard to (i) above, such additional legislative measures would be necessitated if the practices described at (a) to (c) of Article 4 existed in The Bahamas. However, in connection with legislative machinery enabling the Government of The Commonwealth of The Bahamas to give effect to the International Convention on the Suppression and Punishment of the Crime of Apartheid, legislative measures in this regard are being considered.

With regard to (ii) Article 26 of the Constitution defines the judicial process mentioned here. Such a process is open to any person in The Bahamas if the rights guaranteed in Chapter III of the Constitution are violated.

With regard to (iii) above, this means that The Bahamas could not accept obligations going beyond those prescribed in the Constitution.

The Constitution, which is the supreme law of the land, already provides for the enjoyment of the aims and the objectives of the Convention. Also, The Bahamas does not accept any interpretation of Article 4 that obliges it to deal with alleged breaches of the Convention ultravires of the due process of law specified in the Constitution.

The ninth preambular provision to the Convention expresses alarm that the manifestation of racial discrimination is still in evidence in some areas of the world and is perpetuated by governmental policies based on racial superiority or hatred, such as policies of apartheid; segregation or separation. Racial discrimination or apartheid is not in evidence in The Bahamas. The reservations expressed by The Bahamas should therefore not be taken out of the context of a society that has no racial problems. But within the context of a society where the rule of law exists. (Law includes any written instrument having the force of or any written law).
3. Paragraph 321 of Supplement No. 18 (A/34/18). The observation, in connection with the implementation of Article 2 of the Convention, that "there would appear to be no specific legislative and judicial measures and the hope that the next report would be more informative and contain precise analysis of the existing legislative or administrative provisions so that the Government would be able to make a more categorical statement rather than one which indicates some doubt".

There are no specific legislative measures undertaken in The Commonwealth of The Bahamas that give effect to Article 2 of the Convention nor have there been any judicial decisions in this regard. Constitutional provisions, however, do exist.

The Convention predates the Independence Constitution of The Commonwealth of The Bahamas. When that Constitution was drafted, the Convention influenced the formulation of Chapter III of the Constitution which deals with the Protection of the Fundamental Rights and Freedoms of the individual. It has not been found necessary to enact legislative or administrative measures other than those available by virtue of the Constitution itself.

4. Paragraph 323 of Supplement No. 18 (A/34/18). The observation that "Article 26 (1) of the Constitution was made subject to the provisions of paragraphs (4), (5) and (9) of that Article and that paragraph (4) in particular represented a far reaching reservation and the suggestion that Government may consider whether its provisions were compatible with its obligations under the Convention. And the suggestion that Government may wish to consider the possibility of bringing the definition of the expression 'discriminatory' in line with that of the Convention".

First of all, it should be noted that provisions similar to paragraphs 4, 5 and 9 of Article 26 of the Constitution of The Commonwealth of The Bahamas are to be found in the Constitutions of many independent Commonwealth Countries (former British territories) of which The Commonwealth of The Bahamas is one.

Now, with regard to the observation pertaining to paragraph 4, the Committee gave no indication as to whether its observation applied to paragraph 4 in its entirety or if not, then to which of the five sub-paragraphs was the observation intended. The Government of The Commonwealth of The Bahamas has, however, considered Article 4 in its entirety and is of the firm opinion that its provisions are not inconsistent with Government's obligations pursuant to the Convention.

Mindful of its obligations under the Convention, Government has not enacted legislation pursuant to any of the sub-paragraph (a). Criticism of sub-paragraph (b) which related inter alia, to the exclusion of non-Bahamians from engaging in gainful employment is saved by paragraphs 2 and 3 of Article 1 of the Convention. The said paragraphs state that the Convention shall not apply to exclusions, etc., made by a State Party between citizens and non-citizens.

Neither has any law been enacted pursuant to subparagraph (c). Any law that may be enacted pursuant to subparagraph (a) could not be termed discriminatory or inconsistent with the objectives of the Convention since such actions or laws must be reasonably justifiable in a democratic society. An action or a law which is inconsistent with the objectives of the Convention, certainly would not be reasonably justifiable in a democratic society like The Bahamas.
The restrictions mentioned in subparagraph (e) apply to all citizens of The Bahamas without distinction as to race, ethnic origin, etc.

The Committee also suggested that Government should consider the possibility of bringing the definition of the expression "discriminatory" in line with that of the Convention. According to Article 26 (3) of the Constitution of The Commonwealth of The Bahamas, the expression "discriminatory" means: "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description'.

In the Convention the term "racial discrimination" shall mean:

"Any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

Admittedly, the definition of racial discrimination in the Convention is wider than the definition of the term "discriminatory" in the Constitution in that the Convention refers also to fundamental freedoms in the economic, social, cultural or any other fields of public life, whereas in the Constitution there is no explicit reference to discrimination in those fields of human activity. However, what may be implied or inferred may not necessarily, in fact, be the case. The term "persons" in Article 26 (3) of the Constitution embraces all persons and the descriptive terms of race, colour, creed, etc., are not exhaustive. Article 28 (1) of the Constitution reinforces this point as "any person" alleging infringement of his fundamental rights, has recourse to the Supreme Court of The Bahamas.

In the light of the above, the Government of The Commonwealth of The Bahamas considers that in practice the term "discriminatory" as defined in the Constitution is sufficiently comprehensive to embrace the definition of racial discrimination as contained in the Convention, as the Fundamental Freedoms of the Individual are among entrenched provisions of the Constitution.

The Committee should note that in order to change the definition of the term "discriminatory" in the Constitution, a Constitutional Amendment would be necessary. The procedures pursuant to such a proposal are set forth in Article 54 of the Constitution, according to which a three-quarters majority in both houses of Parliament and a simple majority of the voters qualified to vote are required in order to ensure success of such a proposal. In a democratic society like The Bahamas, this may not be easy to achieve. Nonetheless were circumstances to prevail in The Bahamas that would warrant the adoption of another definition, then the Government would give further consideration to the Committee's suggestion.

5. Paragraph 324 of Supplement No. 18 (A/34/18). The observation that "no existing penal legislation implemented the obligations set out in Article 4 of the Convention".
There is no specific penal legislation to implement Article 4. The Government is considering this matter and it is hoped that in its next report the Government would be able to report positively on this matter. (See first full paragraph, p. 18 above).


(a) The question as to what extent, exceptions and restrictions of Article 25 (5)-(10) of the Constitution were based on concepts of ethnic origin and what effect they had on the exercise of fundamental human rights.

The Government wishes to assure the Committee that the exceptions and restrictions referred to above are in no way connected to, or based on ethnic origin.

(b) The observation that no specific legislation existed to implement the rights listed in Article 5 (e) (i)-(vi).

(i) The right to work, etc. Every person in The Commonwealth of The Bahamas has a constitutional right to become a member of a trade union. Implied here is the corollary of the right to work. There is no specific legislation which guarantees this right. It must be realized that legislative measures in themselves cannot effectively ensure the enjoyment of this right. Effective enjoyment of the right to work depends mainly on various measures designed to ensure that jobs do exist. In this connection the Government of The Commonwealth of The Bahamas has, particularly since Independence, embarked upon a vast programme of economic development and diversification, notably in the Hotel, Fishery, and Agricultural Industries, where the Government has become a major entrepreneur. Racial or ethnic factors play no part in the award of jobs.

Furthermore, in the common law tradition, that which is not prohibited by law is permitted by law. Hence, because in The Commonwealth of The Bahamas there are no specific laws guaranteeing the rights listed at Article 5 (e) (i)-(iv), it would be incorrect to conclude that such rights do not exist. Practice, in this respect, is the better indicator of the extent to which such rights are in fact realized and enjoyed.

Foreign nationals wishing to lawfully engage in work in The Bahamas must first of all obtain a work permit from the Department of Immigration. Such a permit would have a time limit, but may be renewable depending upon the circumstances of the case.

(ii) The right to form and join trade unions. As previously stated, this right is enshrined in the Constitution of The Bahamas. (Article 24).

(iii) The right to housing. As stated in our last report, there is no specific legislation in this regard. Neither is there any legislation which says that an individual does not have a right to housing. Consistent with its obligations to provide a just and equitable society and its commitments to safeguard the social, cultural and economic welfare of all Bahamians, the Government, since its inception in 1967 has been engaged in encouraging the construction of homes for low and middle income earners. (See Section 9 (i) (e) of the 1967 Housing Act.)
Pursuant to this commitment, a Housing Corporation exists which assists low and middle income earners, without distinction, to acquire housing.

(iv) The right to public health, medical care, social security and social services. There is no constitutional right to medical care. Section 6 of the Health Services Act, however, provides for free medical services to those in need, and at public expense and without distinction, at a Government operated hospital or medical clinic. As regards to social security, there is in existence a National Insurance Scheme under which social security benefits are available, without distinction, to all persons who qualify.

(v) The right to education and training. This right is not guaranteed in the Constitution, however in accordance with Sections 12, 13 and 14 of the Education Act, the Minister responsible for education has a duty, within the limits of his resources, to ensure efficient primary and secondary education to all Bahamians. Scholarships to institutions of higher learning at Government's expense may also be available. In this connection it is informative for the Committee to note that for the past decade, expenditure on education in The Bahamas has constituted the single highest item in the National Budget.

(vi) The right to equal participation in cultural activities. Cultural activity falls within the purview of the Ministry of Education and Culture in The Bahamas. While there is no constitutional or legislative provision which guarantees such rights, there is no distinction practiced whatsoever in the enjoyment of these rights.

(vii) In The Bahamas the right of access to any public place by anyone is guaranteed in the Constitution (Article 26 (7)). The right of access to public transport is provided for in Chapter 284 Section 73 (1) and Section 80 (1) of the Road Traffic Act.

The Committee's Report further states that one of its members expressed concern regarding the competence of the Parliamentary Registrar to remove the names of persons subject to legal incapacity from the electoral register. It is not clear whether the member's query is, whether the Parliamentary Registrar is the proper person to perform this function or that he might do so in a discriminatory fashion. It is assumed that the query relates to the latter.

The power of the Parliamentary Registrar to remove the names of persons subject to legal incapacity from the electoral register is not a discretionary power exercisable without regard to the conditions prescribed by the law.

Any person who may be deemed to be suffering a legal incapacity is defined in Section 10 (2) (a) and (b) of the Representation of the People Act 1969. According to which Act, a person shall be deemed to be suffering legal incapacity and not entitled to registration:

(a) While he is serving a sentence of imprisonment (by whatever name called) imposed by any Court in The Bahamas, or is under sentence of death imposed by any such Court, or is suffering imprisonment in lieu of the execution of such sentence; or

(b) While he is deemed to be a lunatic or of unsound mind by virtue of any finding or declaration under any Act.
Sub-paragraphs (a) and (b) above are the only conditions based upon which the Parliamentary Registrar may remove a person's name from the electoral registry for reasons of legal incapacity.

In the event that a person's name is removed from the register the matter need not rest there. In accordance with Section 20 (2) (b) of the Representation of the People Act, such a person has recourse first of all to the Registrar. If he satisfied the Registrar that his name should be included in the Register, he shall no be registered.

Secondly, if that person whose name has been removed from the Register is not satisfied with the decision of the Registrar to so remove him, then in accordance with Sections 21 and 22 of the Representation of the People Act, he is entitled to take his case to a Court. The due processes of law alluded to above are available to any person who in this connection feels that he has been wronged by the Parliamentary Registrar.

Paragraph 326 of Supplement No. 18 (A/34/18). "The hope expressed that the Government would examine the need to establish the right of victims of racial discrimination to reparation or satisfaction for any damage suffered".

The necessity to establish by way of legislation the right of victims of racial discrimination to reparation or satisfaction for damages suffered does not arise because of the judicial system and juridical practice in The Bahamas. In individual alleging infringement of his constitutional rights, which are inclusive of the rights enumerated in the Convention, has the constitutional right to appeal to the Supreme Court of The Bahamas for redress. (See Section 28 of The Bahamian Constitution).

The Supreme Court of The Commonwealth of The Bahamas has jurisdiction to order redress. Article 29 (2) (a) and (b) of the Constitution of The Commonwealth of The Bahamas states:

"The Supreme Court shall have original jurisdiction -

(a) to hear and determine any application made by any person (emphasis added) in pursuance of paragraph (1) of this Article; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article".

The relevant articles of the Constitution are contained in the Annexures, there is therefore no need to cite them more fully here.

The very wide powers to make orders, issue writs, and give directions are ancillary to the powers conferred upon the Supreme Court cited at (a) and (b) above. The necessity to establish by way of legislation redress for victims of racial discrimination does not arise, as appropriate constitutional and judicial machinery are already in existence.

Finally, the Committee sought up to date information on the school curriculum, with particular reference to activities being undertaken to educate young Bahamas in the Spirit of the Convention. In reply, the Government wishes to state that whereas there is no specific course taught with regard to the Convention, the objectives of the Convention are included in the Social Studies programme which is included in the curriculum.
ANNEX I

DEMOGRAPHIC INFORMATION ON
THE COMMONWEALTH OF THE BAHAMAS
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The table shows the distribution of foreign-born population in the Bahamas from 1901 to 1971.
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