



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fourth session

SUMMARY RECORD OF THE 1620th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 26 February 2004, at 3 p.m.

Chairman: Mr. YUTZIS

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY
STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Fifth to fourteenth periodic reports of the Bahamas

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Fifth to fourteenth periodic reports of the Bahamas (CERD/C/428/Add.1, questions by the Rapporteur)

1. At the invitation of the Chairman, the members of the delegation of the Bahamas took places at the Committee table.
2. Ms. BETHEL (Bahamas), introducing the fourteenth periodic report of the Bahamas, said that her Government was committed to combating and eradicating racism and racial discrimination at the national, regional and international levels. No less than 14 government ministries and departments had collaborated on the preparation of the report currently before the Committee.
3. Considerable strain had been placed on the country's financial resources in terms of the duplication of social and economic infrastructure, owing to the irregular distribution of the population. That notwithstanding, the Government remained committed to providing essential social services to the entire population. Approximately 85 per cent of the population were of Afro-Caribbean origin. The most serious problem relating to the ethnic composition of the population was illegal immigration, principally from Haiti. The Government, however, made efforts to ensure that all persons in the Bahamas, regardless of race, ethnicity, nationality and immigration status were accorded their human rights and fundamental freedoms, and were granted access to basic social services and due process of law.
4. Although there was no specific legislation in the Bahamas that prohibited racial discrimination, the Government considered that the prohibitions entrenched in the Constitution were sufficiently comprehensive to encompass the definitions of racial discrimination set out in the Convention. There were also cases of specific legislation that prohibited discrimination within certain fields, such as the Employment Act, which prohibited discrimination on the basis of race, creed, sex, marital status, political opinion, age or HIV/AIDS. No cases of employment-related discrimination on the basis of race, ethnicity or gender had been reported in recent times. Although the Government actively pursued a "Bahamianization" policy, it was not based on racial or ethnic discrimination, but rather on the aim of promoting the employment of qualified Bahamians wherever possible.
5. There had been no decided court cases relating to racial discrimination and there was no discrimination on the basis of race or ethnicity with respect to voting or standing for political office. All persons were guaranteed freedom of expression, assembly and movement, irrespective of their race or ethnic background. Although there was no specific legislation in place regarding the incitement of racial discrimination and racially motivated violence, constitutional provisions and legislation regarding libel, the commission of violence and incitement to violence, threat of harm and riot served to ensure that sufficient prohibitions to incitement existed, along with means of enforcement and redress.

6. The Government sought to provide certain social services without discrimination on the basis of race or ethnicity. One major policy goal was thus to ensure the provision of good quality, affordable housing for all. Health care was available to all persons in the Bahamas, without prejudice and if necessary free of charge, and primary and secondary education were provided for all children up to the age of 16, regardless of their race, creed or ethnic background. Education facilities had also been extended to the children of undocumented Haitian immigrants.

7. Civic awareness courses that addressed the issue of racial discrimination had been included in school curricula. An Intercultural Weekend was held annually in October, in which representatives of over 50 nationalities resident in the Bahamas exhibited their art, culture, food and traditions. The Bahamas had participated fully in the drafting of the Caribbean Community (CARICOM) Charter of Civil Society, which served as a bill of rights for all persons in the region, irrespective of their race, ethnicity, gender, creed and nationality. Efforts had consistently been made to demonstrate the country's abhorrence of all forms of discrimination, including racial discrimination, particularly during the apartheid regime in South Africa. The Government remained committed to fulfilling its responsibilities by joining with its international partners to eradicate racism and racial discrimination and to implement the Durban Declaration and Programme of Action adopted during the Durban Conference.

8. Mr. AMIR, Country Rapporteur, commended the delegation of the Bahamas for resuming its dialogue with the Committee following a 22-year absence. The submission of the fourteenth periodic report was indicative of the Bahamas' desire to further develop its human rights protection system in an atmosphere of stability, peace and security. When ratifying the Convention, the Bahamas had submitted a reservation in respect of article 4, subsections (a), (b) and (c), on the grounds that the Constitution contained provisions regarding discrimination in general. The Convention had been taken into account when the Constitution had been drafted, and paragraph 5 of the report currently before the Committee contained a list of the constitutional laws relevant to racial discrimination. All judicial procedures to be implemented in cases of human rights violations were set out in the Constitution.

9. He drew the delegation's attention to the fact that the United Kingdom had previously formulated a reservation to article 4 of the Convention, which stipulated that new legislation would be required only if the rights specified in article 5 of the Convention were not provided for in the existing legislation (paragraph 9 of the report).

10. The general information on the land and people of the Bahamas contained in the fourteenth periodic report made very little reference to the economic, social and cultural life of the population, its ethnic distribution or to the presence or absence of racial discrimination as defined in the Convention. It was therefore very difficult to take stock of the degree to which the Convention was being implemented in the State party.

11. He noted that the Bahamian economy was based primarily on tourism and financial services and that the per capita income of the country was relatively high, contributing largely to its stability. The Bahamas cooperated closely with the United States to combat drug trafficking, and legislation had been enacted to protect against money laundering. In 2003, the Bahamas ranked 49th out of 160 countries on the Human Development Index, which was a relatively high ranking.

12. No reference to the term “racial discrimination” was contained in the section of the periodic report on the general political structure of the State party. Although the information concerning article 15 of the Constitution helped the Committee to understand the fundamental rights and freedoms afforded Bahamians (para. 52), it did not address article 1 (4) of the Convention. Moreover, there was scant reference in the report to the provisions of the various subparagraphs of article 2 of the Convention, which were very important. If that meant that racial discrimination did not exist in the Bahamas, so much the better, but the Committee had no way of verifying such a conclusion. That was all the more true since the Bahamas had not made a declaration under article 14 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals.

13. While the periodic report gave the overall impression that the political will existed to discourage racial discrimination and that there was no specific policy of socio-economic exclusion in the Bahamas, it was difficult to be sure since no indicators had been given. The fact that the term “racial discrimination” did not exist, as such, in the legislative texts made it very difficult for the Committee to have a discussion on the subject.

14. Bahamian law did not explicitly punish the dissemination of ideas based on racial superiority or hatred; however, provision had been made under the law of libel to punish persons who disseminated ideas resulting in an individual being exposed to general hatred. He asked how it was possible to distinguish between libel committed negligently and that perpetrated intentionally. It was not clear what was meant by the statement contained in paragraph 120 of the periodic report that the Governor-General could prohibit the importation of any publication “that in his opinion would be contrary to the public”.

15. It was not enough for the Government not to encourage or support the creation of organizations that sought to promote or incite racial discrimination; it should enact specific legislation to prohibit such organizations. He requested additional information on the Judicial Committee of the Privy Council and on the Industrial Tribunal, in terms of the assistance they provided to individuals. While the periodic report indicated that Bahamian citizens could seek redress at the Supreme Court (para. 145) when they felt their rights had been violated based on their race, that claim was difficult to verify in the absence of recourse by citizens to the Committee’s individual communications procedure.

16. The phenomenon of illegal immigration posed a major challenge to the Bahamas on many fronts, not the least of which was the financial cost resulting from the care provided to immigrants in detention centres. However, such detention ran counter to article 5 (d) (i) of the Convention, which stipulated that States parties undertook to guarantee the right of everyone, without distinction as to national origin, the right to freedom of movement and residence within the borders of the State. He wished to know how the Government distinguished between political refugees and economic migrants. It was a sign of progress that the Constitution of the Bahamas allowed non-Bahamian persons to join political parties and to become citizens if they wished to become candidates for election to the House of Assembly (para. 192).

17. He noted that the Bahamas had not ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment or the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography. He had received reports and

photos from Amnesty International concerning children who had been mistreated in prison in the Bahamas. It was encouraging to note that government officials had openly acknowledged the need for improvement in the treatment of prisoners.

18. The resumption of dialogue with the State party was a positive step. It was clear that the Government had understood that incorporating the provisions of the Convention in the domestic law of the Bahamas did not undermine that law, but rather strengthened it. Although many of the points raised with respect to the fourteenth periodic report were repetitions of the Committee's earlier dialogues with the State party, the presence of the latter before the Committee testified to the Government's willingness to tackle issues relating to racial discrimination and to address them squarely. That willingness would certainly help advance development in the region.

19. Mr. VALENCIA RODRÍGUEZ said that the drafting of the fourteenth periodic report of the Bahamas was the result of enormous efforts on the part of government ministries and legal bodies. Although there were no official records on the ethnic distribution of the population, the Committee had been provided with useful data on its demographic make-up. While Blacks comprised the majority, recent changes as a result of migratory flows had made the country more cosmopolitan. Haitians constituted the largest group of immigrants, both legal and illegal. The socio-economic indicators for the Bahamas were quite satisfactory, since the Bahamas occupied third place in the North American region in terms of per capita income (para. 19).

20. Constitutional norms provided the main basis for combating racial discrimination, and a definition of the term "discriminatory" was contained in article 26. Because that definition was narrower in scope than the definition of "racial discrimination" used in the Convention (para. 55), the Government should consider revising it to bring it into conformity with the Convention. It should also enact specific legislation to prohibit racial discrimination, which would promote fuller application of Bahamian constitutional provisions.

21. The measures taken to give effect to article 4 of the Convention were reflected in the provisions of the law of libel contained in the Penal Code (para. 117), which addressed racial discrimination through reference to other offences. There was thus no specific legislation that incorporated article 4. He suggested that the State party should consider enacting legislation that specifically addressed racially motivated acts and that drew inspiration from the documents produced by the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

22. The Government should consider the possibility of withdrawing its reservation to article 4, since experience had demonstrated the pointlessness of such reservations. The freedoms of expression, association and other related freedoms were not considered to be unlimited and could therefore well be brought into conformity with the provisions of that article. That was the general tendency in many countries.

23. The Bahamas was a country that attracted legal and illegal immigrants because of its favourable economic conditions. It was reassuring to know that the Government was providing good treatment to such immigrants, especially in terms of respecting their fundamental human rights. It was important to regularize the status of such persons, who were guilty of nothing more than leaving their countries in search of a better life.

24. The statement contained in the periodic report (para. 193) to the effect that indigenous persons did not form part of Bahamian society was worrying. He enquired whether such groups were denied rights, including the most fundamental rights and freedoms. In that connection, there appeared to be a contradiction between paragraphs 193 and 203 of the periodic report, since paragraph 203 mentioned the human rights of persons belonging to indigenous populations. The delegation should comment.

25. The Committee would welcome additional information on the right to housing, health, social security and social services for minority groups, especially indigenous people and immigrants. Similarly, given that the periodic report affirmed that education was the best way to tackle discrimination, the reporting State should indicate what measures had been taken to ensure that education was available to minority groups. Regarding article 6 of the Convention, the State party was advised to introduce legislation that ensured total compliance with the obligations in that article. The Committee would also appreciate additional information on other means of redress available to deal with racial discrimination, apart from those inherent in the Employment Act.

26. He commended the State party on the events and activities detailed in the periodic report under article 7 of the Convention and hoped that such measures would continue and increase in future.

27. Mr. de GOUTTES said that neither the definition of racial discrimination in article 26 of the Bahamian Constitution nor the employment laws of the reporting State constituted sufficient legislation for the implementation of article 4 of the Convention. While libel, incitement of hatred and illegal publications were prohibited by the Penal Code, the specific legislation required by article 4 was not in place in the Bahamas. He suggested that an aggravating circumstance of racism might be introduced in the Penal Code so that any offence based on racist grounds could be punished more severely.

28. Regarding illegal immigration, the most serious problem currently facing the Bahamas, reports of discrimination against immigrants from Haiti required clarification. If such reports were confirmed, it would be interesting to know why no legal action had been taken against those responsible. The Committee would welcome additional information on the judicial controls in place in detention centres for immigrants, particularly the Carmichael Road Detention Centre (para. 172). It was unclear whether NGOs engaged in human rights protection had access to those centres.

29. The rights of asylum-seekers also needed clarification. The latest Amnesty International report stated that asylum-seekers from Haiti and Cuba had been repatriated with no respect for international law. There had reportedly been no proper investigation into their cases within the framework of the procedure to determine refugee status. It would be interesting to learn whether the Government planned to incorporate the United Nations provision on the status of refugees into domestic legislation.

30. Regarding the Bahamianization policy mentioned in paragraph 204 of the periodic report, he asked whether it might not be interpreted as discrimination against both illegal and legal immigrants, particularly in the field of employment.

31. Mr. TANG Chengyuan, agreeing with Mr. de Gouttes, said that it was important that domestic legislation should include legal provisions to punish activities that promoted and incited racial discrimination. He noted that the Government was considering the implementation of such legislation (para. 137) and urged it to do so.

32. Regarding the police and the judiciary, it would be useful to learn whether any members of those bodies had committed any acts of racial discrimination, and if so, what measures the Government had taken to punish those acts.

33. While the State party had clearly endeavoured to resolve the problems relating to illegal immigration (para. 171), it was unclear whether the Government had acted with the utmost caution when repatriating the foreign nationals concerned. Additional details on those repatriations would therefore be welcomed. He would also appreciate information on any cases of racial discrimination committed by members of staff at detention centres for illegal immigrants and the measures taken to punish any such acts.

34. Mr. ABOUL-NASR said that the affirmation in paragraph 193 concerning indigenous persons should be clarified. It would be interesting to have more information on the indigenous population of the Bahamas.

35. Mr. AVTONOMOV said that, while the objective of the Bahamianization policy was to strengthen society and encourage greater solidarity among its members, the fact that no distinctions were drawn on ethnic and racial grounds resulted in a lack of statistical data with which to analyse changes and trends in society. It was possible that discrimination against an ethnic or racial group was occurring, but that no complaints were being made. He would therefore welcome information on whether the Government would be able to take racial and ethnic distinctions into account in future, bearing in mind that anonymous data collection was possible.

36. While he commended the assertion in paragraph 66, concerning governmental, national and local policies and legislation, he pointed out that the Committee also considered measures taken by Governments to prevent discrimination in the private sphere. It would therefore be useful to know what the Government had done to tackle racial discrimination that arose from prejudices in society and not as a result of any legislation or policy. While article 26 of the Bahamian Constitution was laudable, special measures were necessary to detect trends in that area.

37. Regarding the reservations entered on three articles of the Convention on the Elimination of All Forms of Discrimination against Women, the Committee would be grateful for more information on the content of those reservations and why they had been entered.

38. With regard to paragraphs 117 and 118 of the periodic report, libel and inciting hatred of an individual should not be considered synonymous with disseminating ideas of racial superiority or establishing racist organizations. While the former were important, the mandate of the Committee was to consider the incitement of hatred of a group of people on racial or ethnic grounds. The reporting State should indicate what measures it planned to introduce in that respect.

39. Mr. BOYD said that he had welcomed the opportunity to familiarize himself with the Bahamian Constitution and would appreciate more information on the meaning of the exceptions to article 26 thereof, particularly article 26, paragraph 4 (d). The implications of that provision were unclear, as it might be interpreted as a material limitation on protections against discrimination. Fundamental civil and political human rights protection gave force to inalienable rights, regardless of the will of the majority. The reporting State should therefore indicate whether there was a way of reconciling the broad exception in article 26, paragraph 4 (d) with article 5 of the Convention on the Elimination of Racial Discrimination. He would also welcome additional information on how that exception had been interpreted judicially in practice so that it did not nullify the broad protection afforded in article 26.

40. Mr. SICILIANOS echoed the Committee's concern regarding the exception to article 26 of the Bahamian Convention mentioned by Mr. Boyd. Whilst he appreciated the concerns of the Government regarding the difficulty inherent in amending the Constitution, he agreed with Mr. de Gouttes that global anti-discrimination legislation could be introduced that would allow the Bahamian Constitution to be interpreted in accordance with the State party's obligations under the Convention.

41. With reference to article 6 of the Convention, he asked whether it was true that the principle of non-discrimination set out in article 15 of the Bahamian Constitution could be invoked only in connection with another constitutional right, as was the case in the European Convention on Human Rights and Fundamental Freedoms.

42. The reservations the State party had made to article 4 appeared to be the legacy from the United Kingdom. Given the importance of that article for the Committee, he urged the reporting party to fully accept article 4 and introduce the relevant legislation.

43. He commended the State party on the Employment Act that had entered into force in 2001. While economic, cultural and social rights were not explicitly mentioned in the Convention, the Committee applauded the enforcement of those rights and the establishment in that Act of the principle of non-discrimination, particularly as it prohibited not only direct, but also indirect discrimination.

44. Mr. CALITZAY echoed the comments made by his colleagues concerning the Bahamas' reservation to article 4 of the Convention. He requested more detailed information with regard to the main causes of mortality in the Bahamas listed in paragraph 31 of the report; in particular, he wished to know about the nature of the injuries involved, any vulnerability of certain groups of people to particular afflictions, and the kind of treatment that they received.

45. He also requested more information about the situation of illegal Haitian immigrants. He too was troubled by the assertion that indigenous persons did not form part of Bahamian society (para. 193), given that paragraph 203 of the report indicated that such individuals were protected under chapter III of the Bahamas Independence Order 1973. He asked what kind of reasons might be deemed reasonable justification for an employer to hire a disabled person at a lesser rate of pay (para. 202). He also asked whether the right to form and join trade unions (paras. 205-210) extended to legal and illegal foreign workers. With regard to the enjoyment of housing, health and social security rights, further information was required about the day-to-day experience of the Bahamian population, and not just about the relevant legislative provisions.

46. Mr. KJAERUM said that he wished to know the number of refugees in the Bahamas and asked about the procedures for granting asylum, including opportunities for appealing a decision. He noted that recent discussions about the leadership of one political party in the Bahamas had seemed to focus on skin colour rather than merit, which had indicated that after 35 years of majority rule, there was still a need for racial reconciliation. He had been interested to learn about the annual “One Bahamas” celebrations (para. 275) and asked for information about other initiatives in the same vein. He asked whether the Government of the Bahamas had any plans to withdraw its reservation to article 4 of the Convention, the last sentence of which was particularly far-reaching. He also asked for more information about the opportunity for legal remedy in the event of discrimination, and about the institution of the Ombudsman.

47. Mr. LINDGREN ALVES recalled that international law did not just apply to relations between countries themselves; it also set guidelines for the approach that countries should adopt in their domestic legislation. He noted that much of the Bahamas’ legislation seemed to have been drafted with a view to prohibiting racism and preventing apartheid, something that had been essential at the time that the Bahamas had gained independence. He urged the Government to review the existing legislation in the light of the Convention, as it was apparently envisaging (paragraph 137 of the report). He asked whether there was de facto discrimination against Haitian immigrants with regard to their right to work. Since the Bahamas had always been at the forefront of the struggle against discrimination of all kinds, he was surprised that citizenship could be conferred only by the father, which constituted gender discrimination.

48. Ms. JANUARY BARDILL welcomed the information in the report on the status of women (paras. 75-89) but wished to encourage the Bahamas to report more specifically on the intersection of race and gender, by focusing on the ways in which vulnerable groups experienced discrimination on grounds of race. In that regard, she referred the delegation to the Committee’s general recommendation XXV on gender-related dimensions of racial discrimination. She asked the delegation to clarify the way in which the Penal Code related to racial discrimination. She also asked for clarification of what was meant by riotous behaviour in a public place (para. 125) and how the provision was utilized, since she was concerned that it might lead to profiling of individuals or to misinterpretation of the intentions of particular groups in society.

49. The report seemed to have been written to please the Committee, rather than as a critical analysis of the measures, strategies and policies of the Bahamas as they related to its obligations under the Convention. She recalled that State party reports to the treaty monitoring bodies should be written primarily for the benefit of the State party itself, not of the Committee, which was there in a largely advisory capacity. She noted that tackling discrimination was made all the more difficult in countries, like the Bahamas, that were largely homogenous, since the racial boundaries were harder to define. When it came to compile its fifteenth periodic report, the Government should try to analyse in more detail the main challenges that it faced in combating racial discrimination in the Bahamas.

50. Mr. HERNDL recalled that the Committee’s role in the reporting procedure was to help State parties along their path to the elimination of racial discrimination, and he was therefore happy that the Bahamas had resumed its dialogue with the Committee. He noted with satisfaction that the Bahamas had ratified the amendment to article 8 of the Convention, and asked it to consider making the declaration under article 14. He noted that the Bahamas’ reservation to article 4 had been made at the time of its succession to the Convention in 1973.

One of the difficulties with the reservation, which was in some ways more an interpretative declaration than a reservation, was lack of clarity in its wording. However, his first concern was not for withdrawal of the reservation - although that was of course desirable - but for the Government to make it a priority to ensure full implementation of the provisions of article 4; once that was achieved, there would no longer be any need to maintain the reservation. He therefore urged the Government of the Bahamas to proceed with the adoption of specific measures to bring Bahamian law into conformity with article 4 of the Convention.

51. The CHAIRMAN said that the Committee was glad to have received the Bahamian report, since silence was notoriously difficult to interpret; he hoped that the channels of communication between the Committee and the Bahamas would remain open in the future.

52. Ms. BETHEL, in explanation of a point raised by several members of the Committee, said that the reason that there were no indigenous persons in Bahamian society was that Spanish slavers had carried off the entire indigenous population of the islands by 1520 (para. 14). She welcomed the constructive comments made by the Committee, which she hoped would mark the beginning of a rich dialogue.

The meeting rose at 5.45 p.m.