



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eighty-third session

Summary record of the 2250th meeting

Held at the Palais Wilson, Geneva, on Thursday, 22 August 2013, at 10 a.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 10.15 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Sixteenth to twentieth periodic reports of Jamaica (continued) (CERD/C/JAM/16-20; CERD/C/JAM/Q/16-20)

At the invitation of the Chairperson, the delegation of Jamaica took places at the Committee table.

Mr. Amir (Country Rapporteur), referring to paragraph 5 of the report, requested additional information about the practice of skin bleaching, any measures taken by the State party to address it and the results of any such measures. He asked whether civil society organizations had had the opportunity to review the Committee's most recent concluding observations and provide input on the report currently under consideration.

Mr. McCook (Jamaica) said that the issue of skin bleaching was separate from, though related to, the issues mentioned in paragraph 5 of the report and that doing it justice would require an in-depth discussion of sociological issues.

He said that he would endeavour to answer the questions posed by Committee members at the previous meeting, starting with those about Maroons and Rastafari. As Jamaica did not disaggregate population statistics by ethnic group, the exact number of Maroons living there was not known. Maroons were found throughout the country and enjoyed the same rights and access to State services as other Jamaicans, in addition to those granted them through long-ago treaties with the British crown.

Rastafarianism was a religious movement deriving much of its underlying philosophy from Pan-Africanism and related elements. Not all Rastafari were of African descent, and dreadlocks were now popular among non-Rastafari. Children were allowed to wear dreadlocks to school.

Regarding the situation of people of foreign descent or birth, and more particularly of citizens of Latin American countries and the United States, living in Jamaica, he said that statistics were not disaggregated on the basis of residents' ancestry and that the rights in the Charter of Fundamental Rights and Freedoms, which had replaced chapter 3 of the Constitution, were guaranteed to all persons in Jamaica irrespective of citizenship.

His country had no plans to introduce into national law the definition of racism found in the Convention. His delegation was not in a position to state why Jamaica had not ratified article 8 of the Convention. Regarding article 4 of the Convention, he said that the Constitution, national legislation and common law provided a basis for the prosecution of offences involving incitement to, or acts of, discrimination. He listed legislative measures under which the dissemination of music inciting racial discrimination could be prosecuted.

After describing some measures to tackle crime and violence in Jamaica, turning to the issue of human trafficking, he said that the Trafficking in Persons Act of 2007 constituted the overarching legislation on the issue and was supported by other legislation, such as the Child Pornography (Prevention) Act of 2009. His Government took the issue of trafficking very seriously and believed that concerted national and regional action was needed to address it.

He provided statistics on cases reviewed by or pending with the Independent Commission (INDECOM) established in 2010 to investigate reports of abuse by State security officers. He emphasized that law enforcement personnel received training in human rights issues. Regarding whether extrajudicial killings by the police had a racial element, he said that neither the Office of the Public Defender nor INDECOM had received any complaints indicating that there was a racial component to such crimes.

Turning to questions about refugees and asylum seekers, he said that under the Refugee Policy of 2009 refugees had the right to be provided with a proper travel document. Over the past 10 years Jamaica had granted asylum to 33 people. Those given asylum or classified as victims of human trafficking enjoyed the same rights as people born in Jamaica and were assisted with repatriation as applicable.

He could not give statistics on the outward flow of members of minority groups from Jamaica as such data were not disaggregated by ethnicity. Regarding the supposed omission of 0.1 per cent of the population from statistics, he said that it probably resulted from a flaw in statistical methodology. Regarding measures taken in the Caribbean Community (CARICOM) to address unskilled workers' freedom of movement, he said that certain categories of skilled workers had enhanced rights with regard to movement among the various CARICOM countries. Whether all workers should have similar rights was an issue to be decided jointly by all the countries. He was not aware of any statelessness issue in Jamaica, since under the Charter of Fundamental Rights and Freedoms all Jamaicans had the right to a passport. He hoped that the framer of that question could explain the concern in more detail.

Regarding his country's reservations to the Convention, he said that there was a difference of opinion about the legal significance of article 5 of the Convention. The Jamaican Constitution did not enshrine the right to work and housing, and it was not clear whether article 5 obliged Jamaica to provide those benefits or merely to provide equal access to them. In his Government's view the reservation did not weaken or impair the State's duty to eliminate all forms of racial discrimination. As for whether the reservation implied that domestic legislation prevailed over the Convention, his delegation did not think so.

While his country was considering whether to establish a national human rights institution, the prevailing view in his Government was that Jamaica had sufficient effectively structured and supported mechanisms to protect the rights of all citizens. A human rights unit was being set up in the Ministry of Justice.

Turning to questions about economic rights, education and political participation, he said that section 13.3.2 of the Charter of Fundamental Rights and Freedoms enhanced all Jamaicans' ability to exercise their right to vote. In contemporary Jamaican society the issue of skin colour did not significantly affect people's opportunities or their access to rights and services.

He described the goals of the national cultural policy and the types of activities undertaken within that framework. While he did not have budget figures handy for the Jamaican National Heritage Trust, he could say that much of the funding was spent on the preservation of national heritage sites. Jamaica had cultural agreements with several countries of the Latin American and the Caribbean Group (GRULAC).

Women played a significant role in all aspects of Jamaican life. Several high-level positions, including those of Prime Minister and Chief Justice, were occupied by women and they were represented at all levels of government. However, Jamaica had yet to meet the target of 30 per cent representation in government. History was taught at all levels and the Ministry of Education had designed a syllabus aimed at deepening students' knowledge of Jamaican history. An official day and week celebrating Jamaican history were held annually and students were educated in the culture of all the country's communities.

Skin bleaching was addressed by several ministries through initiatives informing the public of the danger it entailed. Interventions had taken place in schools, vulnerable communities and in the media, bleaching products had been prohibited and the Government was endeavouring to rid the market of illegally imported products.

The Chairperson said that data relating to the Committee's questions could be included in the subsequent periodic report, if necessary.

Mr. Kemal asked why there had been a delay in the submission of the State party's periodic report, given the high literacy rates in Jamaica. He said that several Caribbean countries had informed him that they lacked the resources to meet their reporting obligations and he suggested that Committee members travel to States parties to provide assistance. Jamaica should consider withdrawing its reservations because they might cause the Government's position on the Convention to be misunderstood.

Mr. McCook (Jamaica) said that the Committee's comments on the reservations would be communicated to the Government. The reservations did not lessen Jamaica's commitment to the aims of the Convention. There were many treaty bodies and mandate holders, and fulfilling all reporting obligations was a challenge for all countries. Reports took time to prepare and required communication between different bodies; they were therefore valuable to domestic policymaking. Jamaica had recently committed to increasing its reporting activity and challenges stemmed from time constraints rather than literacy levels. Given restrictions on resources, a failure to report did not necessarily reflect a lack of commitment to treaty bodies. While Jamaica would commend Mr. Kemal's suggestion regarding assistance to the Office of the High Commissioner for Human Rights, support must come from within the bodies preparing the reports.

Mr. Diaconu asked what privileges were granted to the Maroons by the treaty signed in the eighteenth century with the British Crown and whether they constituted discrimination. He wished to know whether Jamaica had ratified the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, given that they covered the rights contained in article 5 of the Convention.

Mr. McCook (Jamaica) said that the treaty addressed land issues relating to territories that had been under Maroon control at that time. The laws of Jamaica applied to all citizens, but Maroon communities had their own structures that were respected by the Government, provided they did not conflict with the Constitution or the law. The treaty did not grant privileges to the Maroons and landownership was not currently an issue. The Maroon's claims to land were largely based on the treaty, which should be respected. Jamaica was party to both covenants mentioned by Mr. Diaconu.

Ms. Crickley, referring to the issue of skin bleaching, asked whether skin tone was a factor in whether individuals frequented expensive establishments, such as restaurants, or owned a business. Was bleaching institutionalized, beyond individual choice? In the

past, Ireland had not legislated against incitement, something that was then abused by neo-Nazi groups; Jamaica could learn from that experience.

The withdrawal of Jamaica's reservations would support the Convention. She asked how many applications from refugees had been approved and requested information on the protection provided for a group of Haitian refugees who had recently been returned to their country. She agreed that the economic and social causes of crime needed to be addressed. Human rights education should focus specifically on racial discrimination and should be provided for the security forces. She requested information on employment agencies. Civil society organizations should participate in the dialogue with the Committee and the production of reports. She encouraged the State party to ensure that women were represented in all parts of society.

Mr. McCook (Jamaica) said that colour and background did not affect society. Jamaicans felt free to express their opinions; public opinion was a satisfactory indicator of social concerns and had not reflected any problems relating to discrimination, nor had civil society groups or the media, which were free to address any topic. The matter of skin colour was examined in relation to how it was manifested in certain practices. In the past, preferences and privileges had been based on skin colour but that was no longer the case. There were business owners in all sections of the population, although some companies reflected historical patterns of ownership. However, the Constitution did not allow for expropriation; the aim was rather to empower all Jamaicans. Civil society organizations had been extensively consulted in the reporting process and had not cited racial discrimination as a concern, so that there was no information available from them.

The considerations when repatriating refugees after a natural disaster were different from those regarding political refugees, and in the case of the Haitian refugees there were no concerns about difficulties they might face in their home country. Employment agencies mainly sought applications for posts abroad and their announcements were published, so the Government would know if any were discriminatory. There were some issues surrounding them, for example regarding misrepresentation, but in general their conduct was not a cause for concern. In some cases, human rights education for security forces was provided by civil society organizations, and Jamaica was committed to striking a balance between security and respect for human rights.

Mr. Murillo Martínez said that the underlying causes of skin bleaching must be studied and Jamaica should include information on efforts to strengthen the cultural identity of groups that were vulnerable to the practice in its subsequent periodic report. He asked whether there were cultural exchange programmes with countries where the consumption of drugs was part of some communities' cultures, as was the case of cannabis consumption among the Rastafari community, and whether the matter had been the subject of debate in Jamaica. There were examples of communities who were descended from groups that had escaped from slavery and established independent societies, such as the Maroons, throughout the Americas.

Mr. McCook (Jamaica) said that discussions had been held and studies had been conducted on the issue of decriminalization but that, to date, there were no plans to reform the legislation or review the policy on the use of cannabis, which was very clear.

Mr. de Gouttes said that Jamaica had a dualist system, whereby international agreements to which Jamaica became a party did not become part of domestic law unless so determined through national legislation. Taking that into account, together with the non-self-executing nature of some provisions of the Convention and the State party's reservations, how could the provisions of the Convention be invoked before the domestic courts? Echoing the concerns expressed by other Committee members, he urged the Government to withdraw those reservations.

Mr. McCook (Jamaica) drew attention to the fact that all the goals of the Convention were met by national legislation. Noting that judges could take cognizance of various sources of law, including the Convention, he confirmed that they were bound by domestic law. A complainant, if so advised by counsel, was entitled to draw attention to specific provisions of the Convention. However, incitement to racial discrimination was prohibited and punished by law. His delegation nevertheless took note of the Committee's proposal that Jamaica should withdraw its reservations.

Mr. Vázquez, referring the Government to the Guide to Practice on Reservations to Treaties of the International Law Commission, encouraged it to specify in its subsequent periodic report the provisions of its Constitution that affected its obligations under the Convention and had given rise to its reservations. He shared the concern raised by Mr. Diaconu that the State party had made reservations to article 5 of the Convention — which reiterated some of the provisions of the International Covenant on Economic, Social and Cultural Rights — even though it had no reservations to the Covenant itself. He requested clarification in that regard.

The State party had put forward arguments relating to the domestic judicial process to justify the reservations to article 4, adding that incitement to racial discrimination was prohibited by common law. Was it the case that, in Jamaica, incitement was criminally prohibited under common law? The explanations provided by the delegation suggested that its reservations to article 4 were not only procedural but also substantive. Accordingly, he urged the Government to either withdraw its reservations or justify the need to retain them.

Mr. McCook (Jamaica), referring to the comments regarding common law, said that case law, together with the appropriate legislation that applied to specific types of conduct, formed the basis of judgements. Acts of discrimination were covered by statute and racial motivations underlying criminal acts were punished accordingly. As to the requests for his Government to withdraw its reservations, it was already complying with the obligations set forth in the Convention. The main challenge was to determine the process by which it should best effect that compliance, from a policy perspective.

Mr. Cali Tzay said that he was aware that police violence did not arise from State policy, but wished to know whether the authorities had identified any individual acts of police violence involving discrimination. He also wondered whether universal education was available only to Jamaican nationals or also to foreign citizens, including undocumented persons, and would appreciate further information on the subject in the State party's subsequent report.

Mr. McCook (Jamaica) said that all permanent residents in Jamaica had access to education and other State institutions. No

concerns had been raised with the authorities regarding the existence of illegal residents unable to access State services. More than 1,900 complaints of police misconduct had been received by the Independent Commission of Investigations, but none had concerned incidents of racial discrimination committed by police officers. Both the Independent Commission and the Office of the Public Defender were bodies established by Parliament and independent of the executive. Despite resource constraints, adequate funding had been secured to lay the basis for their effective oversight of, and investigation into, the conduct of police officers.

Mr. Ewomsan said that the practice of skin lightening had also become rampant in Africa. Tragically, one of the legacies of slavery and colonization was slavery of the mind. Identity problems based on an inferiority complex fuelled racism and it was therefore essential to address the problem through education and human rights awareness.

Mr. McCook (Jamaica) said that deeper sociological and philosophical reflection would be required in order to discuss the underlying factors, manifestations and consequences of that practice. His Government did not take the matter lightly and he was confident that Jamaican society was generally conscious that human dignity was the ultimate priority – best conveyed through the words of Bob Marley “Emancipate yourselves from mental slavery, none but ourselves can free our minds”.

Mr. Amir (Country Rapporteur) congratulated the delegation for the clear and concise replies it had provided to all but one of the Committee’s questions. The adoption of legal instruments such as the new Charter of Fundamental Rights and Freedom had contributed to significant social progress in Jamaica. The Committee was nevertheless concerned at the State party’s reservations to the Convention and welcomed its commitment to reconsider them. The Convention could not be invoked in domestic courts for the time being but the Committee was hopeful that the State party would adopt enabling legislation to that effect. It would be all the more appropriate since, commendably, the Constitution — which predated the Convention — and the Charter of Fundamental Rights and Freedom already incorporated the provisions of the Convention. He noted that the Committee’s concluding observations, which would relate to articles 4, 5, 6 and 7 of the Convention, would be published shortly.

Mr. McCook (Jamaica) thanked the Committee for its valuable observations and said that the recommendations to be addressed to his Government would be given special attention and consideration.

The Chairperson said that a briefing meeting would be held with the NGOs from Sweden before consideration of the periodic report of Sweden.

The meeting rose at 12.55 p.m.