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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-seventh session

SUMMARY RECORD OF THE 73rd MEETING

Held at the Palais Wilson, Geneva,

on Wednesday, 21 November 2001, at 10 a.m.

Chairperson: Ms. BONOAN-DANDAN

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(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Second periodic report of Jamaica

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Second periodic report of Jamaica (E/1990/6/Add.28; E/C.12/Q/JAM/1; E/C.12/CA/JAM/1; HRI/CORE/1/Add.82)

The CHAIRPERSON said that the absence of any representative of the Government of Jamaica was regrettable. In early October 2001, a note verbale had been received from the Permanent Mission of Jamaica, requesting a postponement of consideration of Jamaica's second periodic report (E/1990/6/Add.28). As the request did not comply with the time limits established for such a postponement, the Committee had decided, in accordance with rule 62 of its rules of procedure, to consider the report as originally scheduled, even in the absence of a representative. The Government had considered sending representatives from the Permanent Mission in Geneva but had changed its mind at the last moment because those representatives would have been unable to contribute towards a constructive dialogue, owing to the fact that no written replies to the Committee's list of issues had been prepared. While it was totally unsatisfactory to consider a report in the absence of representatives of the State party involved, it was essential for the Committee to abide by its rules of procedure. She invited the Committee members to participate in a general discussion of the report with a view to formulating some concluding observations, which would be transmitted to the Government of Jamaica and used as a basis for its third periodic report.

Mr. MALINVERNI said he failed to understand why Jamaica's second periodic report made no mention of article 2 of the Covenant, relating to non-discrimination. Section II of the country profile prepared by the secretariat (E/C.12/CA/JAM/1) drew attention to the fact that the Jamaican Constitution did not prohibit gender discrimination. Its anti-discrimination provision defined as discriminatory any action "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed," making no reference to gender. Stereotypical attitudes towards gender continued to persist in Jamaica, particularly in the area of education. On page 9 of the country profile, relating to the right to just and favourable conditions of work, attention was drawn to the existence of gender-discriminatory legislation in the area of employment.

Mr. ATANGANA said that further information was needed about the status of the International Covenant on Economic, Social and Cultural Rights in Jamaica. According to paragraph 38 of the core document (HRI/CORE/1/Add.82), in order for the provisions of any international agreement to which Jamaica was a party to become enforceable by the courts, legislation implementing the agreement was necessary. No such legislation had been enacted in relation to the International Covenant on Economic, Social and Cultural Rights.

The CHAIRPERSON said that, in addition to Jamaica's second periodic report, members might wish to refer to other sources of information in their discussion, for example the concluding observations of other treaty bodies. The alternative "shadow" report submitted by the Association of Women's Organizations in Jamaica (AWOJA), which described the situation of women in Jamaica, would no doubt prove valuable to the Committee when drafting its concluding observations.

Mr. SADI said that the information provided in the country profile concerning the Constitution's anti-discrimination provision was confusing. In the section concerning article 7 it was stated that the Jamaican Constitution did not prohibit discrimination on the basis of sex; whereas according to the section relating to article 2, paragraph 2, the Constitution enumerated certain fundamental human rights and freedoms afforded protection without regard to "race, place of origin, political opinions, colour, creed or sex". He would welcome some clarification of that apparent contradiction.

The CHAIRPERSON said that the Committee would endeavour to clarify the matter. She had discussed the issue of gender discrimination with representatives of various Jamaican women's organizations, who seemed to agree that stereotypical attitudes were the basis of most forms of discrimination.

Mr. MALINVERNI said that even if it transpired that the Constitution did not expressly prohibit gender-based discrimination, that lacuna could be offset by the fact that Jamaica had ratified the Convention on the Elimination of All Forms of Discrimination against Women.

Mr. MARTYNOV expressed disappointment that the State party had failed to provide any written replies, particularly because the information provided in the report dated back to 1996 and 1997. Further information was needed about recent developments. He was interested to learn that Jamaica had denounced the Optional Protocol to the International Covenant on Civil and Political Rights.

Mr. PILLAY said that while he deeply regretted the absence of a Jamaican delegation, he was even more disappointed that the State party had provided no written replies to the Committee's list of issues. Equally unfortunate was the absence of Mr. Rattray, a Jamaican member of the Committee, who could have been consulted informally and might have been able to cast light on some issues. Doubtless, as was the case in most Commonwealth countries, the Covenant, though ratified by Jamaica, did not have any legal force unless its provisions were implemented in domestic law. It would have been interesting to hear details of any relevant case law involving the Court of Appeal and the Supreme Court. He also drew attention to the concluding observations of the Human Rights Committee at its sixty-first session (CCPR/C/79/Add.83), in which that Committee had expressed the hope that the recommendation of the Constitutional Commission, to the effect that the new Bill of Rights should explicitly refer to prohibition of discrimination on the grounds of sex, would be implemented as part of the envisaged review of the Jamaican Constitution.

Mr. SADI said that the Committee should not be too swift to judge Jamaica on its denunciation of the Optional Protocol to the International Covenant on Civil and Political Rights. In his personal view, Jamaica had been driven to take that decision when the Human Rights Committee had overruled approximately 90 per cent of the decisions made by its highest judicial authorities regarding capital punishment.

Mr. GRISSA suggested that the Chairperson, in her capacity as Country Rapporteur, should advise the Committee on how best to proceed in the discussion, given the scarcity of information available.

The CHAIRPERSON, speaking as Country Rapporteur, said that the list of issues, which had been prepared in consultation with international non-governmental organizations (NGOs) and other United Nations sources, indicated the areas that required attention. The fact that the Jamaican Government had not sent a delegation to the meeting indicated that the Committee on Economic, Social and Cultural Rights was considered to be less significant than the other treaty monitoring bodies, to which the State party had reported. One priority issue that had already been mentioned was the legal status of the Covenant in Jamaica. Questions about the structural adjustment programme and foreign debt were also crucial, as debt service payments were contributing significantly to the widespread poverty in Jamaica. Paragraph 120 of the report also detailed a series of very complicated formulae for computing the household poverty line, which made it very difficult to ascertain where that line was situated.

The structural adjustment programme had an impact on all sectors of society: the Committee on the Elimination of All Forms of Discrimination against Women had recently concluded that women were over-represented among the poor, and that families headed by women were the worst off. Nonetheless, there were indications that the Government was trying to implement measures to promote gender equity. For example, some educational programmes had been designed to change traditional attitudes towards women.

The International Labour Organization (ILO) had requested the Committee to include in its list of issues a question on the boy child, a critical issue in all Caribbean countries. In their efforts to reduce discrimination against girls, States parties were neglecting the needs of boys. As a result, an increasing number of boys were dropping out of school, turning to delinquency and even committing suicide.

Another priority issue neglected in the report was the right to form and join trade unions and to strike. Information provided by different sources was contradictory. Further details were needed about the right to social security for those working in the informal sector, particularly women, persons with disabilities and older persons.

The issue of child labour was also a problem in Jamaica, particularly in the informal sector. However, Jamaica was receiving funding

of US\$ 1.2 million from ILO in the framework of the Programme for the Elimination of Child Labour, following the signing of a memorandum of understanding between the two parties in September 2000. Jamaica had since been commended for being the first Caribbean State to adopt a strategy to combat child labour. Further issues to be mentioned in the concluding observations included security of tenure, adequate housing, and HIV/AIDS.

Mr. GRISSA said that, in addition to the problems of child abuse and child labour, there was also a problem of child prostitution, which was apparently a significant factor in the tourist trade.

Mr. SADI said the Committee should look into Jamaica's homicide rate, which seemed to be unusually high. Whether as a result of poverty, unemployment or alcohol abuse, it appeared that Jamaican society was rather prone to violence. There was also a high rate of common law marriage, which gave rise to problems such as children born out of wedlock. Sexual promiscuity was also prevalent. The Committee should attempt to obtain more information on those points.

Mr. PILLAY said the alternative "shadow" country report submitted by AWOJA made the point that the Constitution had not yet been amended to prohibit discrimination on grounds of sex. There were still significant differences between men's and women's pay: even well educated women were still paid less than men. Abortion was illegal, but permitted in exceptional circumstances under the terms of a ministerial decree.

Poverty was a subject that needed to be discussed. Some reference should be made to the Committee's statement on poverty and the Covenant (E/C.12/2001/10), and the State party should be requested to draw up a strategy to address the problem, particularly with regard to the most vulnerable groups, i.e. women, children and the elderly.

Mr. WIMER ZAMBRANO said he found it surprising that the official documentation contained so little mention of Rastafarianism, the religion that dominated Jamaican culture. It was also important to note that Jamaica was effectively divided into two countries: the north, with Montego Bay as its capital, and the south, where Kingston, the political capital was located. The north's economy was based on tourism, which explained the concentration of wealth in that area. The Committee would need to pay more attention to the existence of problems such as sex tourism, involving both children and women.

Violence was rife, particularly in Kingston, which had been carved up among a number of mafias: there were areas of the city where no visitors dared to venture even by daylight. Security services for banks and public institutions were provided by private companies. In other words, there were aspects of Jamaican society over which the Government had no control.

The CHAIRPERSON said that, according to information received, the events of 11 September 2001 had had a serious impact on tourism, further exacerbating poverty levels.

Mr. MALINVERNI said that, according to ILO, Jamaican law permitted the forcible conveyance of seafarers on board ship to perform their duties; and that according to the International Confederation of Free Trade Unions (ICFTU), there were significant problems of child labour in the informal sector (E/C.12/CA/JAM/1, pp. 9-10). Jamaica had not ratified the ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

According to the AWOJA shadow report, Jamaica had no legislation penalizing sexual harassment, and none was currently planned.

In its concluding observations on the initial report of Jamaica, the Committee on the Rights of the Child had expressed concern at the lack of schools, education budget cuts, and the low status and shortage of teachers (E/C.12/CA/JAM/1, p. 15).

Mr. GRISSA said that the problem of educational dropout rates should be mentioned. As the report showed (E/1990/6/Add.28, para. 154), budget constraints and lack of space resulted in a sharp rise in dropout rates in grades 5 to 6, when children were just of an age to fall into delinquency. Jamaica had no excuse for reducing education expenditure, for it was not a poor country: its per capita income of US\$ 3,500 was relatively high for a developing country.

The CHAIRPERSON said another problem reported by Jamaicans themselves was the quality of the education provided in schools.

Mr. RIEDEL said the report described the method used for computing the household poverty line (para. 120), but made no mention of the outcomes of any surveys conducted. The Committee should request Jamaica to use the benchmarks it had provided in the current report to provide an assessment of the situation in its next report, extrapolating, if necessary, from samples taken from each region of the country.

There was conflicting information on article 12 on the right to health. The Economist Intelligence Unit, on the basis of World Bank figures, described Jamaica's record in primary public health care as "good", presumably in comparison with other countries in the region; whereas according to Women of the World, many patients could not afford to visit a doctor and there was a decline in the number of pregnant women receiving care from the public health system (E/C.12/CA/JAM/1, pp. 13-14). The latter points were not mentioned in the report, and the Committee should recommend that the State party address that specific problem. It should also request information in the next report on recent trends in the important area of family planning, given the steep decline in visits to family planning clinics between 1991 and 1995 (ibid., p. 14). In general, Jamaica was not in the lowest ranks with regard to health care, but the report made no mention whatsoever of trends in any of the areas covered by the Committee's General Comment No. 14, was most unsatisfactory.

Ms. BARAHONA-RIERA said the figures revealed patterns of violence against women, men and children, including sexual aggression, which amounted to a culture of violence. Such a culture also aggravated the problem of domestic violence. It was a very serious problem, and one the Committee should mention in its recommendations, since there was no sign of any programme or mechanism to address the issue.

The report did not mention sex tourism, which was in part responsible for increases in rates of HIV/AIDS. The Committee should

request information on any measures the Government was taking in that regard.

Lastly, she said there was no official information regarding the Commission for Gender and Social Justice, which, according to the AWOJA report, had been established in 1997 to implement legislation on gender equity, but to which no funds had been allocated.

Mr. CEAUSU said that according to ILO data in 1991 the poorest 10 per cent of Jamaica's population had had a 2.4 per cent share of total income, while the richest 10 per cent had had a 31.9 per cent share (E/C.12/CA/JAM/1, p.12). The Committee should ask the State party for an explanation of the mechanisms that permitted such unequal income distribution.

Jamaica's social security system was based on a National Insurance Scheme that provided protection to those in the formal sector, contributions to which were mandatory (E/1990/6/Add.28, para. 66). The National Insurance Fund had apparently stood at J\$ 7.8 billion in 1997, yet only some 89,000 people in all were actually in receipt of benefits from the Fund; he wondered who benefited from the compulsory contributory system. Similarly, according to ILO figures, the total number of persons in receipt of pensions accounted for only 0.7 per cent of Jamaica's population, while the number of persons aged 64 or over in receipt of pensions accounted for 9.5 per cent (E/C.12/CA/JAM/1, p. 10). That would mean that 90 per cent of the population aged 64 or over did not receive a pension. Such a gap in the social security system represented another potential source of poverty. He would have welcomed an explanation from the State party as to the number of Jamaicans drawing retirement pensions and as to why the pension fund should be so enormous when so few apparently received benefits.

Mr. WIMER ZAMBRANO said that he too wondered whether Jamaica had signed or ratified the ILO Conventions relating to child employment and minimum working age; according to information available to the Committee, it had not. Likewise, ILO Conventions Nos. 102 and 118 relating to social security had not been ratified by Jamaica. He suspected a correlation between that situation and the incidence of social problems.

Mr. MARTYNOV said that the picture with regard to gender equality seemed contradictory. Although the rate of women's unemployment was three times that of men, United Nations Development Programme (UNDP) figures showed that women's economic activity, while below that of men, had risen throughout the 1990s. In addition, government measures to combat unemployment, including vocational training programmes with special emphasis on courses for women, had been reasonably successful. The adult literacy rate was quite high among women, over 90 per cent, and higher than the rate for men.

With reference to article 7, the Committee should perhaps voice concern about occupational safety standards in Jamaica, seemingly still based on legislation enacted in 1943. The State party had earlier indicated its interest in new legislation, but none had yet been notified. The situation was the more disquieting in that cases of fatal accidents in industry were rising faster than the number of fatal traffic accidents.

The Ministry of Labour's right to halt any strike and refer the dispute to a tribunal could pose problems. Replying to an ILO committee in 1999, the Government had promised to review that right, but nothing had been reported to the Committee on the matter. A further cause for concern was that any new trade union was required to register within 30 days of its establishment.

He shared the concern voiced about social security problems especially since Government expenditure on pensions as a percentage of gross national product (GNP) had fallen more than two-fold between 1990 and 1996. Moreover, the age group 65 or over was growing the fastest, but only 9 per cent of that group had pension cover. With regard to child labour, Jamaica had not ratified the two relevant ILO Conventions. The minimum age for employment, at 12 years, was far too low, and even that, it seemed, was not always observed. According to ICFTU child labour problems were particularly serious in the informal sector.

The existence of a national programme to eradicate poverty was to be welcomed, but according to the AWOJA report, real per capita consumption had declined by over 6 per cent in 2000, rural areas being the worst hit. Information about education was conflicting; the country profile indicated budget cuts for education whereas, according to UNDP, public expenditure on education as a percentage of GNP had increased during the late 1980s and early 1990s. The gap between primary education and enrolment in secondary school was perhaps due in part to the fact that parents now had to contribute to the costs. The Committee might wish to recommend that the Government should try, even in the current difficult economic climate, to increase education expenditure and to consider providing free secondary education. In that regard, information gleaned from the AWOJA report implied a high degree of correlation between unemployment and illiteracy.

Mr. GRISSA said that the simple measure of poverty in any country was whether or not a family and its breadwinners could obtain enough to eat and drink, and a basic level of fuel, lighting and water enabling it to survive. The Jamaican authorities had provided no explicit information on health matters, although the high mortality rates among women and children, a seeming reduction in the number of women seeking medical advice and the widespread incidence of AIDS, largely due to promiscuity and drug abuse, were causes for concern. The Committee should give closer attention to the health situation in that country and seek adequate information.

Mr. MARCHAN ROMERO said it was regrettable that the Jamaican delegation had failed to attend the current session. From his own experience in that country, there was discrimination by the black majority against whites, who constituted barely 0.2 per cent of the population; other acquaintances and colleagues had confirmed that impression, about which he had intended to put a question to the delegation. With regard to children and young persons, the United Nations Children's Fund (UNICEF) report for the year 2000 had acknowledged the Government's efforts for the advancement of children and adolescents in particular, including the establishment of a national centre for youth development.

The Office of the United Nations High Commissioner for Refugees (UNHCR) had noted that Jamaica's policy towards refugees and asylum-seekers was becoming increasingly restrictive, at a time when the number of requests from Cuba and Haiti in particular was rising. It had also noted, however, that no asylum-seekers had made complaints about ill-treatment, and that government policy was aimed at allowing those accepted to be fully incorporated into Jamaican society. But specific legislation was lacking in that field; nor did there seem to be any firm policy regarding the care of sick or pregnant women among refugees and asylum-seekers.

Mr. PILLAY said that much of the legislation in Jamaica still discriminated against women, who seemingly lacked statutory protection against harassment in the workplace and adequate access to the courts. In general, the law seemed tacitly to sanction violence, including corporal punishment of children in schools and in the family and violence perpetrated by police and prison officers.

The problem of poverty was obviously at its worst in rural areas, where child malnutrition was highest. In addition, some 60 per cent of school absenteeism related to rural areas. The statistics for rape were quite alarming, most of the victims being schoolgirls and other young women. In its concluding observations, the Committee should draw the Jamaican authorities' attention to those concerns.

The CHAIRPERSON, speaking as a member of the Committee, said that, according to the AWOJA report, the cheaper foreign food flooding the Jamaican market as a result of free trade had eroded the ability of women, the mainstay of local food production, to provide for their families - doubtless one reason for the increase in prostitution as a means of income.

Mr. WIMER ZAMBRANO said that, according to figures for 1992, 80 per cent of the Jamaican population was literate. Such a literacy rate seemed unusually high, and he would be grateful if the secretariat could check the figure.

Mrs. BARAHONA-RIERA said that the Committee should take into account the disquietingly high incidence of sexual intercourse among adolescents, the evident lack of sex education and the attendant spread of disease.

Mr. CEASU said that the Committee should also take note of the considerable drop in attendance in secondary education, reflected in the comparative figures for 1993 and 1997 and doubtless affected by measures, introduced by the State party in 1994, calling for a financial contribution from parents.

The CHAIRPERSON said that all the matters raised would be taken into consideration when drafting the Committee's concluding observations.

The meeting rose at 11.55 a.m.