



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

Distr.
GENERAL

CERD/C/SR.1802
7 March 2007

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventieth session

SUMMARY RECORD OF THE 1802nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 28 February 2007, at 3 p.m.

Chairperson: Mr. de GOUTTES

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Initial to ninth periodic reports of Antigua and Barbuda (CERD/C/ATG/9)

1. At the invitation of the Chairperson, the members of the delegation of Antigua and Barbuda took places at the Committee table.
2. Ms. de FREITAS-RAIT (Antigua and Barbuda), introducing her country's initial to ninth periodic reports submitted in a single document (CERD/C/ATG/9), said that her Government fully honoured its international commitments and was determined to play a role in the international community. She drew the Committee's attention to some corrections to be made in the report: in paragraph 9, per capita income should read "\$26,106 ECD", and the percentage of households headed by women should read "43%"; the Freedom of Information Act, referred to in paragraph 39, had been passed in 2004.
3. Any discrimination that might exist in Antigua and Barbuda was usually motivated more by economic factors than by racial or national origin. The Government recognized, however, that economics and racial or national origin could be linked, and had therefore striven to provide the Committee with a picture of society focusing on its disenfranchised sectors. While the country's political structure reflected its status as a former British colony, it had its own Constitution. Many constitutional provisions, including those that protected fundamental freedoms, could be amended only by a two-thirds majority decision in Parliament. The Constitution, together with Antigua and Barbuda's jurisprudence, its statutory provisions and judicial interpretations, provided comprehensive protection for all persons on the national territory.
4. Turning to question 1 on the list of issues, contained in a document without a symbol, she said that little updated information was available on the ethnic characteristics of the population and the socio-economic status of members of the various ethnic groups since no census had been held since 2001. Regarding religion, 98 per cent of the population were Christian, about 1 per cent was Rastafarian, and less than 1 per cent Bahai or Muslim. The right of all persons to practise their faith openly, without interruption or hindrance by the State, was protected in the Constitution. While the Government appreciated the need to remain vigilant concerning incidents motivated by racial discrimination, particularly in times of increased globalization, none had occurred in Antigua and Barbuda. According to statistics from the Ministry of Labour, Home Affairs and Cooperatives, in 2001 5,709 work permits had been issued to foreign workers, who had constituted about 7.43 per cent of the working population at that time. Of that group, 32 per cent had come from Guyana and 27 per cent from Jamaica.
5. Referring to the second part of question 1, she said that a census would be held in 2011. In the interim, data collected by individual ministries would be forwarded to the Committee, although the lack of financial and human resources sometimes hindered data collection and analysis. There were estimated to be about 1,500 illegal immigrants in Antigua and Barbuda. Amnesties had been granted in 1998 and 2002 to give people who had been working illegally,

but were making a viable contribution, the chance to participate fully in society. The authorities took into account a person's contribution to society on a lawful and productive basis, and continued to encourage illegal immigrants to regularize their status, regardless of national or racial origin.

6. While the Government acknowledged the importance of human rights issues, General Assembly resolution 48/134 did not include a mandatory requirement to establish a national human rights institution according to the Paris Principles (question 2). Given that Antigua and Barbuda was a developing country, it was currently too costly to establish a national human rights institution according to the Paris Principles. The promotion and protection of human rights were, however, a priority. The Government was not aware of any human rights violation that was not adequately addressed by the Constitution. The Millennium Naturalization Act, which granted full citizenship to all non-native persons of good standing who had been living in the country since 1 January 2000, had been introduced in 2004. It had been a success in enabling large numbers of people to determine their own future.

7. A legal aid clinic had been established to ensure that all people, regardless of their financial situation, had access to the law. The Ministry of Social Transformation was currently conducting a poverty assessment in order to determine the different types and levels of poverty that existed in society. Poverty-assessment statistics workshops were taking place, teaching people how to understand and assimilate the information obtained from the survey. The questionnaire on which the survey was based included a section on racial and national origin. The Government therefore hoped to be able to provide the Committee with useful relevant data in future. It planned to hold a "Diversity Day" in May 2007, with the aim of enabling people to share their experiences and raising awareness of different racial and national backgrounds.

8. Article 14, paragraph 3, of the Constitution contained a narrower definition of discrimination than article 1 of the Convention (question 3). Subject to a number of exceptions, article 14 of the Constitution prohibited the passing of any law that was discriminatory per se or in its effect, and prohibited discriminatory treatment by any person acting by virtue of any law or in the performance of a public office or authority. The Constitution provided for a wider range of motivating factors for discrimination than that contained in article 1 of the Convention, in which they were limited to race and ethnic origin. Both definitions were relative, rather than absolute, in their scope. In practice, the Constitution had served well in protecting against discrimination of the kinds referred to in article 1 of the Convention.

9. She asked where the Rapporteur had found references to an Equal Opportunity Act since no act of that name existed in Antigua and Barbuda. There were, however, many pieces of legislation in place to protect the equal rights of all citizens. Thought had been given to the need for legislation to ensure that non-nationals had greater opportunities for integration in communities, and had resulted in the adoption of the Millennium Naturalization Act. Her Government did not intend to enact any further legislation on that issue.

10. In 2003 her country had ratified the ILO Convention on Equal Remuneration, and the Labour Code protected the equal rights of men and women in employment. The judicial interpretation of the Code had been broad, and had allowed for extension, rather than contraction, of the protection provided. The Code provided for equal pay for men and

women, prohibited discrimination in employment and recruitment, prescribed minimum wages, prescribed the requirements for safe working conditions, guaranteed the right of all persons not to be unfairly dismissed and provided for the right of all workers to severance pay.

11. The exceptions to the principle of non-discrimination provided for in article 14, paragraph 4, of the Constitution were in keeping with the exceptions made in the Convention (question 4). Such exceptions were necessary to guarantee the freedoms that the Convention was intended to protect. As with all constitutional exceptions, they were very strictly and narrowly interpreted by the judiciary. Under the first exception relating to laws concerning the appropriation of public funds, a law on the use of public funds could be constitutional even if its effect might afford different treatment to different persons, thus allowing government discretion in that regard. The exception only applied to the passing of new legislation by Parliament. Although no laws had yet been passed under that exception, it should be maintained, in order to grant the Government the freedom to fulfil its functions.

12. The second exception with respect to non-citizens only applied to the provisions of a law that specifically related to non-citizens as a group. The Non-Citizens Land Holding Regulation Act had been passed under that exception; it stipulated that non-citizens must be granted licences to hold land. A restriction on land ownership for non-citizens was important in such a small country with limited agricultural resources, in order to strike a balance in land use. The Non-Citizens Undeveloped Land Tax Act imposed a tax on non-citizens who owned land but had failed to develop it.

13. The third exception was similar to that provided for in article 1, paragraph 4, of the Convention. It was intended to allow laws to be passed for the advancement of persons who had been disenfranchised or were disadvantaged for specific reasons.

14. All three exceptions were tempered by section 3 of the Constitution, which stipulated that provisions to ensure the rights and freedoms of certain individuals did not prejudice the rights and freedoms of others or the public interest. An independent judiciary was crucial, since it played a fundamental role in the interpretation of the Constitution. Antigua and Barbuda's judiciary formed part of the Eastern Caribbean Supreme Court.

15. Her Government considered that the Constitution adequately addressed issues of human rights, and that domestic legislation was adequately harmonized with the provisions of the Convention (question 5). The Constitution also addressed all the issues raised in the Durban Declaration and Programme of Action (question 6). Although article 14, paragraph 4, of the Constitution allowed for special measures to be taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups, no such measures had as yet been required (question 7). No migrant groups had been segregated in Antigua and Barbuda (question 8). The segregation mentioned in paragraph 338 of Antigua and Barbuda's report to the Committee on the Rights of the Child (CRC/C/28/Add.22) referred to the voluntary actions of migrants, rather than segregation imposed by the Government. Antigua and Barbuda had never imposed any restrictions on distinct ethnic, racial or national groups, and did not intend to do so.

16. Her Government did not intend to adopt specific criminal legislation designed to implement article 4 (a) of the Convention owing to limited resources (question 9). Since the

Constitution already addressed the majority of issues of concern to the Committee, such legislation was considered unnecessary. The Freedom of Information Act had no specific relevance to the issues raised regarding article 4 (a) of the Convention. Similarly, her Government did not intend to adopt criminal legislation relating to article 4 (b) and did not envisage withdrawing the declaration made regarding the Convention (questions 10 and 11).

17. Her Government considered that the Constitution adequately protected the rights set forth in article 5 of the Convention, and was not aware of any substantial or persistent issues of racial discrimination (question 12). Illegal immigrants were encouraged to come forward and regularize their status (question 13). Antigua and Barbuda's immigration policy had been largely based on the immigrant's ability to contribute to the country rather than on the question of specific national or ethnic origin. The Directorate of Gender Affairs provided a 24-hour crisis hotline, a drop-in, counselling and advice service, a victim support programme, emergency accommodation, legal assistance, and public awareness, education and training programmes (question 14). The Domestic Violence Summary Proceedings Act had been adopted to allow urgent protection orders to be issued for victims of domestic violence. Statistics on domestic violence would be submitted to the Committee in writing.

18. Non-citizens in Antigua and Barbuda were free to travel around the country without restriction unless they were convicted criminals or were accused of committing a crime, in which case their movement would be restricted in accordance with the law (question 15). There were no migrant workers in Antigua and Barbuda, since the economy was based on tourism (question 16). The Labour Code explicitly prohibited discrimination in employment on the grounds of national extraction or social origin (question 17).

19. The data that the Committee had requested on school attendance would be submitted in writing in due course (question 18). The Education Act provided that all children between the ages of 5 and 16 were entitled to compulsory education (question 19). Regardless of racial or ethnic origin, children were provided with free textbooks, uniforms and school meals. All children were entitled to free education regardless of how long they had lived in the country. Access to schools could be restricted for nationals and non-nationals alike in the event of overcrowding. Procedures for disciplinary action against teachers included the appointment of an investigating official who would obtain evidence and information and submit a report to the school principal. The report would subsequently be passed to the Permanent Secretary in the Ministry of Education, who would determine the action to be taken. A system of appeal was also in place. The Minister of Education was currently seeking to establish a teachers' service.

20. Articles 3 and 14 of the Constitution could be invoked directly before the courts (question 20). The legal system also allowed remedies, such as the award of financial damages, in the event of the infringement of constitutional rights (question 21). The Office of the Ombudsman was responsible for receiving complaints from any member of the public about unfair treatment or injustice by government employees (question 22). It performed its role on the basis of an "investigative budget" provided for in the Constitution. Pursuant to the Constitution, the Ombudsman was not subject to the control of any person. He was therefore entirely independent and could investigate allegations of infringements of rights by government bodies.

21. The current report had been submitted to government divisions for input, in order to ensure that it was as comprehensive as possible for submission to the Committee (question 25). The text of the Convention had not been disseminated in Antigua and Barbuda (question 26). Although there was no sensitization and training specifically on discrimination, various ministries ran occasional sensitization training programmes for their staff. Her Government did not intend to make a declaration under article 14 of the Convention (question 27). It had always been vigilant in protecting fundamental human rights and was open to guidance; it considered that a free society had been successfully established for all persons on the national territory.

22. Mr. VALENCIA RODRÍGUEZ, Country Rapporteur, emphasized that Antigua and Barbuda considered its society to be relatively homogeneous in terms of both culture and ethnicity, and that there was therefore no racial or ethnic group requiring specific legislative protection. He would like the delegation to explain how the Constitution, which guaranteed the equal enjoyment of fundamental rights irrespective of race, origin or colour, applied to mixed or white groups vis-à-vis the majority of African descent. The Government should, after duly investigating the population's social and economic conditions, assess which marginalized groups might require particular attention, in accordance with articles 1 and 3 of the Convention.

23. He asked how the many tourists arriving in Antigua and Barbuda were treated. He would like to know more about the type of protection the authorities afforded to non-English-speaking minorities as recognized in paragraph 26 of the Constitution in their relationship with governmental authorities or the judicial system. He noted that so-called "economic migrants", particularly from the Dominican Republic, were still discriminated against in certain parts of the country; the Government should ensure that the measures intended to protect them were indeed implemented.

24. Although the Labour Code and the Education Act both explicitly prohibited racial discrimination in the workplace and in terms of access to public education, it would be interesting to know whether there had been cases in which those enactments had been applied and if the general public were familiar with them. He would also like to have information on school enrolment among the children of foreign workers and minority groups.

25. He invited the delegation to clarify whether the Convention had been incorporated into national legislation, and to elaborate on the statement made in paragraph 30 of the periodic report. He requested further information on de facto and de jure equality as mentioned in the same paragraph, and in particular on the cases in which policies had been introduced to guarantee such equality.

26. He invited the delegation to provide more information on the Office of the Ombudsman, in particular on its main functions and whether it was widely known and accessible to citizens. From paragraph 45 it seemed that it had not yet dealt with complaints of racial discrimination. The Government should widen the Office's field of action to cover discriminatory acts committed by individuals and increase its independence.

27. He would welcome further details on Antigua and Barbuda's implementation of article 3 of the Convention with respect to racial segregation and apartheid as it seemed to affect migrant workers, who did not have equal access to health, education and housing.

28. He asked whether the Government would consider withdrawing the declaration it had made upon ratifying the Convention, mentioned in paragraph 38 of the report; the delegation's description of its implementation of the Convention seemed to render the declaration unnecessary.

29. In order to assess the Government's implementation of article 4 of the Convention, he would like to have more information on the enforcement of the Freedom of Information Act. Had there been any reports of hate speech inciting racial prejudice and violence via the radio or complaints that the media were controlled by political leaders and could not be used by other people?

30. He also asked if the delegation could provide more details on how the rights under article 5 of the Convention were protected, in particular on the political representation of minorities and women in government bodies. Also, did a foreigner who married a citizen of Antigua and Barbuda become a national of the country? Had there been any cases of violation of the constitutional provisions prohibiting racial discrimination (art. 16) in times of emergency?

31. He invited the delegation to provide updated information on Antigua and Barbuda's implementation of the Durban Declaration and Programme of Action. He would also like to know whether the Government planned to make the declaration under article 14 of the Convention.

32. Mr. SICILIANOS invited the delegation to describe specific cases of enforcement of article C4 (1) of the Labour Code, which imposed a 3,000 dollar fine and 12 months' imprisonment on employers who practised discrimination, as mentioned in paragraph 28 of the report.

33. The declaration on the compatibility of the Convention with Antigua and Barbuda's Constitution, cited in paragraph 38 of the report, was flawed from the standpoint of international law: States should not invoke internal legislation, including their Constitution, to release themselves from their international obligations.

34. Moreover, in the second paragraph of that declaration, by saying that it "interpreted article 4 of the Convention as requiring a Party to enact measures in the fields covered by subparagraphs (a), (b) and (c) of that article only where it was considered that the need arose to enact such legislation", the Government rendered optional what was meant to be an obligation. He therefore drew the delegation's attention to the Committee's General Recommendation XV, which stated that the provisions of article 4 were imperative.

35. Mr. KJAERUM asked what was considered a "reasonably practical" period within which non-English-speakers should be informed in a language they understood of the reasons for their arrest or detention, as mentioned in article 5 of the Constitution (report, para. 26).

36. He would also like to know what supervisory mechanisms the Government had set up to ensure that the selection of children for the limited number of primary school places was fair. What provision was made for children - in particular those of migrant workers - who could not attend school?

37. Finally, he encouraged the Government to make the declaration provided for under article 14 of the Convention, which would enable individuals to file complaints of racial discrimination with the Committee, especially as Antigua and Barbuda did not have a national human rights institution and the Ombudsman had limited powers.

38. Ms. DAH noted that the periodic report lacked important demographic and other data, disaggregated by sex, age and national or ethnic origin, that would have enabled the Committee to better assess implementation of the Convention.

39. She asked if the delegation could explain how the autochthonous population - the Siboney and Arawaks - had disappeared. It was surprising to note the State party's assertion that the relative homogeneity of its society obviated the need for specific anti-discrimination legislation, on the one hand, and its repeated reference to constitutional provisions offering protection to vulnerable groups, on the other. She invited the delegation to comment on that apparent contradiction.

40. Given its assertion that there were no migrant workers in the State party, the delegation should explain its understanding of that term. It should further describe the policies in place to protect the rights of foreign women workers and children, and indicate whether the State party intended to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

41. She requested information about specific policies adopted to promote the participation of women in political activities. She would also welcome up-to-date statistical data on female representation in government, the judiciary and decision-making bodies.

42. The State party's commendable contribution to eradicating apartheid did not exonerate it from its responsibility to combat de facto discrimination at home. Discrimination in areas such as education, health care and housing was particularly difficult to identify, and special attention must be paid to difficulties arising for migrant workers.

43. Cultural education was an important tool for addressing prejudice and promoting equality. She would therefore be interested to hear the delegation's comments on the spirit and content of the draft legislation on the broadcast media, as mentioned in paragraph 55 of the report.

44. She encouraged the State party to comply with the amendment to article 8 of the Convention.

45. Mr. AVTONOMOV supported the request made by other members concerning the State party's reservation to article 4 of the Convention. The language used in article 14 of the Constitution appeared to suggest that, under certain circumstances, discrimination was permissible. The delegation might wish to clarify the meaning of that provision and examine the possibility of bringing it into line with the language used in the Convention. It should also explain why the State party did not deem it necessary to adopt further anti-discrimination legislation; the Labour Code explicitly prohibited racial discrimination, which suggested that equality was not taken as read.

46. Unfortunately, the information provided on article 5 of the Convention was incomplete. In its next report, the State party should include details on the implementation of each individual right as enumerated in that article. General Recommendation XX on non-discriminatory implementation of rights and freedoms could serve as guidance in that regard.

47. Contrary to the State party's affirmation that its population was homogeneous, the survey conducted in 2004 had revealed a certain demographic diversity. He would therefore welcome disaggregated statistics on demographic composition. The survey had also recorded 258 resident indigenous persons, even though the State party had claimed that all indigenous peoples had "disappeared". He asked whether those persons were descendants from the islands' original inhabitants or had migrated from abroad.

48. Discrimination was often a result of socio-economic conditions, rather than deliberate State policy. It would thus be useful to obtain information on the socio-economic situation of the various population groups, their representation in State institutions, and their participation in economic activity. Such data would enable the Committee to assess whether structural discrimination had been overcome.

49. Mr. TANG Chengyuan commended the State party for its efforts to prepare a report and engage in dialogue with the Committee, despite its limited financial and human resources. In many countries, Afro-descendants constituted a small and often disadvantaged segment of the population. Given that in the State party Afro-descendants accounted for over 90 per cent of the inhabitants, it would be interesting to learn about their socio-economic and political status. In that connection, he enquired about the demographic characteristics of "minorities" and "non-English-speakers" as mentioned in paragraph 26 of the report.

50. It was unclear how the independence of the Office of the Ombudsman as a monitoring body could be ensured if it was part of the Government. He would welcome information on the appointment procedures, resource allocation and precise functions of the Office.

51. Mr. THORNBERRY asked whether the State party's reservation with respect to article 4 meant that domestic legislation, and not the Convention, determined its obligations in combating discrimination. Such a position would be an inversion of the appropriate relationship between international and domestic law and contrary to the objectives of the Convention. The delegation should indicate whether the Government intended to review its position vis-à-vis article 4, and whether similar reservations had been entered with respect to other international instruments. He further reminded the State party that its responsibilities under the Convention were not limited to ensuring compliance in law and State practice, but extended to promoting a culture of non-discrimination and eradicating discriminatory social practices.

52. Mr. ABOUL-NASR requested clarification of the religious make-up of the population. According to State party statistics, there were 464 Lebanese residents, but no Muslims, which seemed unusual.

53. Ms. de FREITAS-RAIT (Antigua and Barbuda) explained in reply that the chart in question took no account of groups numbering less than 1 per cent of the population. She undertook to provide the Committee with exact figures on the number of Muslim residents.

The meeting rose at 5.55 p.m.