

## JAMAICA

### CERD 29<sup>TH</sup> No. 18 (A/9618) (1974)

82. The Committee found that the initial report of Jamaica contained no information on administrative or judicial measures and that only information on legislative measures contained in it consisted of citations from section 13, 24 and 25 of chapter 3 of the Constitution. The texts of other provisions of the Constitution referred to in those sections were not provided. There was no information on penal legislation corresponding to the requirements of article 4 of the Convention; no information on the fulfilment of the obligations laid down in article 7; and no information on legislation ensuring equality in the enjoyment of some of the rights enumerated in article 5. There was no evidence of any measures taken to incorporate the definition of racial discrimination given in article 1, paragraph 1, of the Convention into the country's penal legislation. There was no information on the country's relations, if any, with the racist regimes of southern Africa or on the ethnic composition of the population, as envisaged in the Committee's general recommendations III 9/ and IV 10/ respectively. There was no indication in the report of the nature and scope of any problem relating to racial discrimination that might exist in Jamaica. And, finally, the information contained in the report was not organized in accordance with the guidelines laid down by the Committee.

83. It was observed that the report appeared to focus less on the measures that were adopted to give effect to the provisions of the Convention than on the reservation made by the Government of Jamaica when it ratified the Convention, which stated that ratification "does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligation to introduce judicial processes beyond those prescribed under the Constitution". The reservation itself and the prominence given to it in the report gave rise to many questions. How much importance did a State attach to its ratification of the Convention if at the same time it expressed reservations which rendered some of the provisions of the Convention inoperative? If the Constitution of Jamaica amply guaranteed the protection of human rights, which obligations under the Convention had induced the Government to make its reservations? And what were the judicial processes referred to in the Convention which, in the view of the Government of Jamaica, might go beyond those prescribed under the Constitution? Did the Government of Jamaica intend to fulfil its obligations under article 2, paragraph 1 (c), of the Convention to undertake periodic reviews of its legislation relating to racial discrimination and to introduce such changes as would bring that legislation into line with the provisions of the Convention? And the did the reservation refer to the present Constitution only, or did it refer also to possible future Constitutions or constitutional amendments?

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9/ See decision 1 (VI) of 18 August 1972.

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10/ See decision 1 (VIII) of 16 August 1973.

84. Some of the exceptions enumerated in subsections 4-8 of section 24 of chapter 3 of the Constitution of Jamaica relating to the anti-discrimination provisions of subsections 1 and 2 of section 24 appeared to be at variance with the spirit and letter of the Convention. Concern over this question was heightened by the scope of the reservation referred to in the preceding paragraph.

85. Besides answering some of the specific questions raised by some members of the Committee during the consideration of his Government's report, the representative of the Government of Jamaica addressed himself to some of the concerns expressed by several members and enumerated in the two preceding paragraphs. The reservation made by his Government when it ratified the Convention had in no way inhibited it from complying with the provisions of the Convention. Virtually no cases of racial discrimination had been brought to court; and the authorities did not feel the need to take administrative measures, or measures under article 7, to eliminate or guard against what amounted to a non-existent evil. Article 4 of the Convention was amply covered by the Constitution. The comments made by members would be conveyed to his Government.

**CERD A/31/18 + Corr. 1 (1976)**

58. The Committee considered the second periodic report of Jamaica together with the information supplied separately by the Government of Jamaica in response to the Committee's decision 3 (VII), concerning the implementation of the provisions of article 4, paragraphs (a) and (b), of the Convention.

59. The Committee noted that the contents of the two documents under consideration were almost identical. Inasmuch as the second periodic report of Jamaica was for the large part a repetition of that country's initial report, members of the Committee observed that the comments, inquiries and requests made during the consideration of the initial report were fully applicable to the two new documents currently under consideration.

60. The texts of sections 13 to 24, inclusive, of chapter 3 of the Constitution of the reporting State - which were crucial for the understanding of the meaning and import of some subsections 24 and 25 - had been requested at an earlier session, but were not submitted along with the new report, and it was observed with regret that report provided no clarifications concerning the comments made by members on the possible incompatibility between some provisions of section 24 of the Constitution and some provisions of the Convention. The Committee was unable to determine whether the reservation made by Jamaica at the time of its ratification of the Convention was confined to "judicial processes" only; nor had any of the questions raised at an earlier session of the Committee regarding that reservation been clarified by the reporting State. The Committee continued to be of the opinion that information on the implementation of provisions of articles 2, 3, 4, 5, 6 and 7 of the Convention by the Government of Jamaica was lacking; and it was regretted that the information envisaged in general recommendations III and IV had not been supplied.

61. The Committee observed that the only new elements contained in the second periodic report of Jamaica were a statement that no cases of racial discrimination had appeared before the Courts and extracts from two legislative enactments passed before Jamaica's ratification of the Convention. Of these, the extract from the Sound Broadcasting and Radio Rediffusion Regulations of 1963 appeared to give effect to some of the provisions of article 4, paragraph (a), of the Convention. On the other hand, the extract from the Disabilities Removal (Jews) Law of 1830, which was considered by some members of the Committee to deal with religious discrimination, was very brief and gave no idea of the conditions actually prevailing in the country. It was observed also that that law preserved special treatment for a particular religion, and it was asked whether similar laws had been enacted for each of the minority religions.

62. The representative of the Government of Jamaica, in his statement, asserted that the basic point was that Jamaica had no racial problem in its territory, that the provisions of the Constitution afforded members sufficient protection against racial discrimination, and that the Government of Jamaica was actively combatting all forms of racial discrimination elsewhere. He assured the Committee that the reservation formulated by his Government on ratifying the Convention had not prevented it from complying with the provisions of the Convention. He foresaw no difficulty in reproducing in Jamaica's future reports the sections of the Jamaican Constitution requested by the Committee. He gave the Committee some data on the ethnic composition of the population of his

country and some information on his Government's international stand against racial discrimination and racist regime. He assured the Committee that he would transmit the questions raised by its members to his Government and would recommend that an attempt to deal with them would be made in its next report.

## **CERD A/33/18 (1978)**

190. Members of the Committee noted that the third periodic report of Jamaica was more comprehensive than the earlier reports, that it was organized on the basis of the guidelines laid down by the Committee, and that it took account of, and commented on, the observations made during the Committee's consideration of Jamaica's initial and second periodic reports and responded to some of the requests made by Committee members on those occasions.

191. As at earlier sessions (A/9618, para. 83, and A/31/18 and Corr. 1, para. 60), much of the discussion of the Jamaican report at the Committee's eighteenth session revolved around the reservation entered by Jamaica at the time of ratification of the Convention - in particular the final sentence, which declared: "Ratification of the Convention by Jamaica does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligation to introduce judicial processes beyond those prescribed under the Constitution." It was noted that, according to the interpretation of that reservation given in the introduction to the report under consideration, the Government of Jamaica, in ratifying the Convention, had not accepted any obligation to grant any rights or to introduce any judicial processes beyond those already provided for in sections 13 to 26 of the Jamaican Constitution, and in particular sections 24 and 25 thereof. Nevertheless, it was noted that the interpretation given in the report included the statements that, "in stressing the paramountcy of the Constitution as the supreme law of the land, the reservation is certainly not designed to weaken the Convention" and that "the Government of Jamaica has taken a number of appropriate measures in furtherance of the spirit and objectives of the Convention". Opinions voiced in the Committee ranged from the view that, inasmuch as the reservation "was not designed to weaken the Convention", it was not a "reservation" at all, to view that the reservation was so far-reaching in its implications as to be incompatible with the objectives of the Convention and inhibitive of its implementation.

192. Members of the Committee asked whether the Government of Jamaica considered that the Convention granted rights which were not granted by, or inconsistent with, the Jamaican Constitution and whether the Convention required any judicial processes not provided for in that Constitution. If so, the rights or processes in question should be clearly identified; if not, it would be difficult to understand why the reservation was made at all. It was also asked whether, in ratifying the other international instruments to which it was a party, the Government of Jamaica had made a similar reservation.

193. The representative of Jamaica stressed that the fundamental obligation imposed by the Convention on States parties was the elimination of all forms of racial discrimination. If attention was focused on that basic obligation, it would be easy to understand Jamaica's position: the reservation did not prevent the Government of Jamaica from complying with the basic obligation laid down in the Convention and, therefore, did not weaken the Convention. However, inasmuch as legal documents were often subject to more than one interpretation it was possible for some to assert that the Convention required a State party to enact express legislation to prohibit incitement to acts of racial discrimination, under article 4, or to accord all the rights enumerated in article 5. In accordance with the former interpretation, the purported obligations of the Convention might be considered incompatible with the provisions of section 22 of the Constitution, guaranteeing freedom

of expression, while the latter interpretation might require that certain rights not guaranteed by the Constitution should be guaranteed - such as the rights mentioned in subparagraph ( e ) ( i ) of article 5 of the Convention.

194. The basic anti-discrimination provisions of the Jamaican Constitution, contained in sections 13 and 24, gave rise to several questions and some concern.

195. With reference to subsection 3 of section 24 - which defined the expression “discrimination” as “affording different treatment to different persons attributed wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed” - a member of the Committee observed that the words “wholly or mainly” suggested that discrimination based to a limited extent on race was permitted, and other members noted that the definition under examination - unlike that contained in article 1, paragraph 1, of the Convention - mentioned “race” and “colour” but made no mention of “descent” or “national or ethnic origin”. The representative of Jamaica stated that the words “wholly or mainly” meant that “the term ‘discrimination’ covered any acts of differential treatment, whether entirely attributable to racial motives or not. The fact that such differential treatment was attributable to considerations other than racial did not make it any less discriminatory”. He stated also that “the concept of ethnic origin was included in the concept of race, and it was therefore unnecessary for the Constitution to make specific provision with respect to ethnic origin”.

196. The exceptions contained in subsections 4, 5 and 7 of section 24 of the Jamaican Constitution, limiting the provisions of subsection 1 (which constituted the basic anti-discrimination clause of the Constitution), which had already been discussed by the Committee at previous sessions (A/9618, para. 84, and A/31/18 and Corr. 1, para. 60), were discussed again at the eighteenth session. Recalling that, in the absence of any specific legislation making the provisions of the Convention applicable to Jamaica, the Committee had to rely on the constitutional provisions applicable to cases of racial discrimination and that, in accordance with a well established rule of legal interpretation, the specific provisions of a text prevailed over its general provisions, a member of the Committee concluded that that rule should be applied to subsections 4, 5, and 7 of section 24 of the Jamaican Constitution, which set out possible exceptions to the general prohibition of discriminatory treatment. Those exceptions included such important areas as marriage, the devolution of property on death, other matters of personal law, and employment in public service. Those provisions - which caused concern and gave rise to doubts that they were really in keeping with the requirements of the Convention - required further explanation. Another member of the Committee thought that “the wording of subsection 4 was so all-embracing that it tended to vitiate the constitutional guarantees of equal treatment” and that “that problem might be overcome by including in subsection 4 a provision to the effect that a differential treatment was permissible only if it was not based solely on consideration of race, etc.” That the exceptions provided for in the subsections of section 4 under consideration “were not intended to ensure the adequate development and protection of certain racial groups”, in accordance with article 2, paragraph 2, of the Convention, made it all the more imperative that an explanation of how the provisions of those subsections were intended to be applied be given to the Committee. Several other members of the Committee also emphasized that the exceptions under examination were extremely significant and could give rise to discrimination.

197. The representative of Jamaica gave a detailed analysis of subsections 4 (a-d), 5 and 7 of section

24 of the Jamaican Constitution. He recalled that section 24 prohibited not only racial discrimination but also discrimination based on place of origin or creed, and argued that the exceptions provided for in the subsections under reference pertained to situations in which differential treatment might be required on the basis of place of origin. That the subsections in question should give rise to the enactment of laws or the adoption of measures which were discriminatory on the ground of race was hardly likely, he asserted; but he conceded that they might result in laws or measures entailing differential treatment on the basis of place of origin.

198. It was noted that section 24 of the Jamaican Constitution prohibited discrimination by the State itself, through laws or through the actions of public authorities or officials, but did not prohibit “racial discrimination by any persons, group or organization”, as was required by article 2, paragraph 1 ( d ), of the Convention. The report commented on that situation and explained it on two grounds: that racial discrimination did not exist in Jamaica and that, in the unlikely event that there should arise a practice of racial discrimination by individuals, groups or organizations, the Government would immediately take steps to eradicate it and guard against its recurrence. It was observed by members of the Committee, however, that the absence of practices of racial discrimination did not remove the need for preventive action, through prohibition and other measures; and that for the Government to wait until acts of racial discrimination did occur before proceeding to enact appropriate penal legislation would mean that in the meantime acts of racial discrimination would go unpunished, and the victims of those acts would be denied effective protection and remedies. Members of the Committee therefore urged the Government of Jamaica to adopt the necessary provisions.

199. In connection with that discussion, it was observed that the content of the report under examination raised the question of whether States parties were free to select the means of attaining the objectives set out in the Convention or whether they were obliged to use the means prescribed by the Convention itself. Thus, the report stated that the Government of Jamaica had taken a number of appropriate measures in furtherance of the spirit and objectives of the Convention but did not consider it necessary to enact legislation to implement certain of its provisions. Replying, the representative of Jamaica called attention to the language of article 2, paragraph 1 (d), which required that States parties should bring to an end racial discrimination by persons, groups or organizations “by all appropriate means, including legislation as required by circumstances”. In his opinion, the phrase “by all appropriate means” made it clear that the Convention did not prescribe any particular means but left each sovereign State free to determine the suitability of the measures to be adopted; furthermore, the words “as required by circumstances” meant that laws should be enacted only when the circumstances so required, that is, when racial discrimination was actually practised. Some members of the Committee, however, observed that that might be the case with regard to the obligation to “bring to an end” existing practices of racial discrimination - but not with regard to the other obligation, to “prohibit” racial discrimination.

200. It was observed that the reliance of the Government of the reporting State on the common law as a means of prohibiting and eliminating racial discrimination did not seem to be well founded, since racial discrimination had occurred in Jamaica during the colonial period, when the same common law had applied. Moreover, it was remarked that common law did not provide sufficient guarantee since it could be vague and imprecise. It was concluded that it was necessary for the Government of Jamaica to adopt express legislation to ensure that racial discrimination would not

occur. The representative of Jamaica asserted that protection under common law was absolute and complete and that the provisions of common law were quite specific and concrete.

201. The discussion summarized in the foregoing paragraphs had relevance not only to the implementation of the provisions of article 2, paragraph 1 (d), of the Convention, but also to the application of article 4.

202. With regard to the provisions of subparagraph (a) of article 4, the report noted that, notwithstanding the absence of specific legislation, the common law prohibited incitement to violence against any race or groups of persons and that, in some cases, the activities prescribed by the Convention “could be caught by the common law offence of sedition”. Members of the Committee emphasized that protection was better than cure; they wondered whether sedition - which generally applied to acts or statements against the State and the Constitution - was so defined in Jamaican domestic law as to apply also to acts or statements against various categories of persons or racial groups; and they requested that the relevant provisions of Jamaican penal law be made available to the Committee. The representative of Jamaica referred in that connection to the reservation made by his Government at the time of the ratification of the Convention and observed that the enactment of express legislation prohibiting incitement to racial discrimination might be contrary to section 22 of the Jamaican Constitution, which guaranteed freedom of expression. In his opinion, despite the absence of such legislation, there were sufficient legal provisions affording the protection called for in article 4, subparagraph (a), of the Convention. He said that sedition was clearly defined in the Constitution and the common law. In reply to the representative of Jamaica, it was recalled that the provisions of subsection 2 of section 22 of the Jamaican Constitution clearly stated that laws which limited freedom of expression in the interests of “public order” or “public morality” or for the purpose of “protecting the reputations” and “rights” of other persons would not be held to be inconsistent with or in contravention of section 22; and it was observed that legislation prohibiting the acts described in article 4, subparagraph (a), of the Convention, far from being inconsistent with the guarantees of freedom of expression provided for in section 22 of the Jamaican Constitution, appeared to be countenanced under the provisions of subsection 2 of that section.

203. According to the report under consideration, there was no legislation in Jamaica giving effect to the provisions of article 4, subparagraph (b), of the Convention. To members of the Committee the arguments advanced in the report in that regard were not convincing: the fact that the acts described in article 4, subparagraph (b), of the Convention were unknown in Jamaica did not justify the failure to take the preventive measures enjoined by the Convention and to enact legislation; and several members voiced their scepticism about the statement that “should any organization indulge in racial discrimination, the governmental and public outcry would be such as to bring such a practice immediately to an end”.

204. Members of the Committee therefore urged the Government of Jamaica to reconsider its position with regard to the implementation of the mandatory requirements of article 4 of the Convention. The representative of Jamaica assured the Committee that its concern, and the views expressed by its members, would be conveyed to his Government.

205. It was noted that, with respect to the application of article 6 of the Convention, the report under



consideration referred to section 25 of the Jamaican Constitution, which provides that an application for redress may be made by any person to the Supreme Court and, in the event that the applicant is dissatisfied, an appeal may be made to the Court of Appeal. It was observed that, although the basic constitutional guarantee of the fundamental rights and freedoms of the individual was contained in section 13 of the Constitution, the remedies referred to in section 25 were specifically made applicable to contraventions of section 14 to 24 inclusive - that is, not to section 13. It was asked what the precise legal significance of that fact was. It was noted also that section 25 of the Constitution did not specify what kind of redress could be obtained by the persons whose rights were infringed. It was not clear, moreover, whether only civil suits could be brought against persons guilty of racial discrimination or whether criminal suits were also possible. The representative of Jamaica was asked whether he could supply some examples of judgements handed down by the courts on the basis of section 25. Finally, it was observed that “the very existence of section 25 of the Jamaican Constitution cast doubt on the assertion that no specific legislation was necessary to prohibit” racial discrimination.

206. In reply to the foregoing questions and comments, the representative of Jamaica stated that section 25 of the Constitution did not refer to section 13 but only to sections 14 to 24 because section 13 was merely a preamble to chapter III. As to redress connection with the provisions of sections 14 to 24 of the Constitution, section 25 provided in subsection 2 that the Supreme Court could “determine” any application made by any person under that section and “make such orders, issue such writs and give such directions as it may consider appropriate”. That included the granting of compensation for damage. As there existed civil provisions, there was no need for other measures of a penal nature.

207. Concerning the implementation of article 7 of the Convention, the information given in the report was noted with appreciation. A member of the Committee expressed an interest in receiving more detailed information on the content of the Ministry of Education’s curricula relating to racism and racial discrimination. Another member referred to the statement that those curricula included “studies of the culture of other countries, particularly those in this hemisphere and those from which Jamaica’s population find their antecedents” and said that he would be interested in learning what attention was paid to Africa in that context. The representative of Jamaica stated that his country was “extremely proud of its African ancestors and heritage” and that that “was reflected in the educational system and specific educational measures”.

208. While noting that the third periodic report of Jamaica supplied the information envisaged in general recommendation III (concerning relations with racist regimes), the Committee regretted that the report did not furnish the information on the demographic composition of Jamaica envisaged in general recommendation IV.

**CERD A/35/18 (1980)**

124. The fourth periodic report of Jamaica (CERD/C/18/Add.8) was considered by the Committee together with the introductory statement of the representative of the reporting State in which, he pointed out, *inter alia*, that the legislation enacted to give effect to the Convention in Jamaica might require the amendment of the Constitution, and that the matter was being explored at the highest legal level in his country. Any decision taken in that connection would be dealt with in the next periodic report.

125. Members of the Committee expressed the view that the report reflected the desire of the Government of Jamaica to fulfil its basic obligations under the Convention and to pursue its dialogue with the Committee; however, they considered the report to be of a somewhat interim nature in view of the fact that the Government of Jamaica was reviewing its position with regard to the need to enact legislation in the field of racial discrimination and they hoped that the next report would contain information on the results of that review. Such initiative, it was stated, would involve reconsidering the reservation entered by Jamaica at the time of its ratification of the Convention. Referring to that reservation, one member asked whether the Jamaican Constitution did not stipulate that treaties or conventions ratified by the Government became an integral part of the law of the land.

126. Members of the Committee also welcomed the initiatives taken by Jamaica in accordance with article 3 of the Convention; it was felt, however, that additional information was needed on measures taken to implement articles 2, 4, 5, 6 and 7 of the Convention and on the demographic composition of the population.

127. The representative of Jamaica assured the Committee that the observations made by members would be taken into account by his Government in the preparation of the next periodic report.

## **CERD A/40/18 (1985)**

589. The fifth, sixth and seventh periodic reports of Jamaica submitted in one document (CERD/C/117/Add.4) were considered by the Committee at its 741<sup>st</sup> and 742<sup>nd</sup> meetings, on 15 August 1985 (CERD/C/SR. 741 and SR. 742).

590. The report was introduced by the representative of Jamaica who said that the Jamaican Cabinet had recently decided to enact specific legislation to implement article 4 of the Convention in accordance with the request made by the Committee at the time of its consideration of the fourth periodic report of Jamaica. Once that legislation was enacted, Jamaica would withdraw the reservation it had made in 1971 upon its ratification of the Convention.

591. Members of the Committee commended the Government of Jamaica on its very positive report and, in particular, on its remarkable stand against apartheid as well as on its decision to enact the legislation required under article 4 of the Convention. They expressed the hope that detailed information on that legislation will be included in Jamaica's next periodic report.

592. Members of the Committee referred to the information provided on the percentage distribution of the Jamaican population by racial origin between 1960 and 1970. In that connection, they asked why there had been a large increase in the black population, while the mixed population and the population classified under the heading "other races" had suffered a considerable decrease, and whether that trend had continued during the last 15 years.

593. They also requested a further breakdown of the Negro/black group, more information on people of East Indian and Amerindian origin and some historical background on the kind of immigration at the time of Jamaica's independence as well as trends during the post-independence period. Members of the Committee emphasized the importance of updated demographic information in order to assess the situation of the various ethnic groups of Jamaica, in respect of their enjoyment without discrimination of the rights set forth in the Convention.

594. With particular reference to article 2, paragraph 2, of the Convention, more information was requested about social strata and the conditions of the various racial groups of Jamaica, especially those which could be considered the most vulnerable or disadvantaged, and the measures being taken in that respect.

595. With reference to article 5 of the Convention, members of the Committee wished to know whether hearings before the courts always took place in English or whether people could use their own languages and the court would provide interpreters, what electoral system prevailed in Jamaica, whether the different racial groups and ethnic minorities were represented in Parliament and in the Government, what the status of political parties was and whether limitations on their establishment could be authorized, what the percentage of illiteracy was and whether illiterates had the right to vote, what the qualifications for obtaining Jamaican nationality were and whether any restrictions in practice were applied to the right of marriage.

596. In addition, members of the Committee asked what was being done to overcome the problem

of illiteracy and improve standards of living and housing and what measures had been taken in the field of social security. They stated that it would be useful to have a breakdown of the level of education and standard of literacy for each group, as well as a breakdown of the racial distribution of participation in economic life and professions in Jamaica, in order to establish whether in practice any one group was more disadvantaged than others. It was also asked whether multinational companies had economic activities in Jamaica and whether legislation existed to protect local people against exploitation and discrimination.

597. With regard to article 6 of the Convention, information was requested on the reasons why there had not been a single case of racial discrimination in the history of independent Jamaica and on whether there had been cases which had been brought before the ombudsman. Clarification was also requested on the possibility for a person whose rights had been violated to appeal over the Supreme Court to the Court of Appeal. Several members also asked whether there was a chance that the declaration under article 14 might be made.

598. In connection with article 7 of the Convention, more information was requested on the curriculum for social studies as well as clarification as to how the Government differentiated the ethnic groups under that curriculum. It was also asked how Jamaica commemorated the International Day for the Elimination of Racial Discrimination and whether that occasion was used to explain the contents and substance of the Convention.

599. In replying to questions raised by members of the Committee, the representative of Jamaica referred to the demographic composition of his country and stated that the results of the most recent census had not yet been obtained; however the experts of the Jamaican Department of Demographic Statistics would provide further information to be included in his Government's next periodic report. Regarding, in particular, East Indians, the representative explained that they had never been a large population in Jamaica and that their numbers had never notably changed. He provided some data concerning the percentage of East Indians compared to the total population of Jamaica from 1881 to 1960 and stated that, from a statistical point of view, East Indians and Afro-East Indians were combined in a single category. He explained that Amerindians had not been a factor in the population of Jamaica since the early eighteenth century. Jamaica had been thinly populated by Amerindians during the first period of colonization, but they had died off very quickly as a result of European diseases, to which they had no immunity, and forced labour. Furthermore, the representative stated that it was impossible to breakdown the classification of black/Negro blood into further categories, since in Jamaica there was no identification with any sub-category of the black or Negro race. Although most people of African descent came from West Africa, there was no identification with any ethnic group but rather with Africa as a whole.

600. With regard to article 4 of the Convention, the representative assured the Committee that it would be kept informed of progress made with regard to Jamaica's commitment to enact legislation to implement the provisions of that article.

601. With reference to article 5 of the Convention, the representative explained that Jamaica had an electoral system based on a single constituency representation rather than on proportional representation. The House of Representatives was elected on a constituency system. However, the Jamaican Senate corresponded more to proportional representation in so far as the winning party in

the lower house appointed 13 members of the Senate while the opposition leader appointed eight. It was not easy to determine the racial classification of each member of Parliament, but there was no racial problem in being elected to it.

602. With reference to article 6 of the Convention, the representative explained that in Jamaica, the Supreme Court was a general court, the court of first instance on constitutional matters, and that the Court of Appeal was the highest court.

## **CERD A/48/18 (1993)**

152. At its 979th and 983rd meetings, held on 16 and 18 March 1993 (CERD/C/SR.979 and 983), the Committee reviewed the implementation of the Convention by Jamaica based on its fifth, sixth and seventh periodic reports submitted in one document (CERD/C/117/Add.4) and their consideration by the Committee (CERD/C/SR.741-742).

153. In his introductory statement, the representative of the State party recalled that in 1985 the representative of Jamaica had declared that the Government intended to adopt legislation to implement article 4 of the Convention, thus allowing the Government to withdraw its reservation to that article. Since then, the Government had decided not to adopt specific legislation, but instead to consider amending section 24 of the Constitution so as to take the Convention into account. The Constitutional Review Committee was still considering that amendment and, accordingly, the reservation to article 4 of the Convention was still in force.

154. Members of the Committee welcomed the presence of the State party's representative, but noted that he had little to report. They recalled that during consideration of previous reports, which had been prepared with the assistance of the United Nations Institute for Training and Research, members of the Committee had asked for more detailed information with respect to the implementation of article 5 of the Convention and had deplored the absence of information about the poorest population groups in Jamaica. In connection with the latter, members indicated that the Committee needed socio-economic indicators to tell it whether ethnic minority groups were disproportionately represented among the unemployed, criminals, prison inmates, alcoholics, drug addicts and prostitutes.

155. With respect to article 4 of the Convention, members of the Committee emphasized that the adoption of measures to implement that article was particularly important.

156. With regard to article 5 of the Convention, members of the Committee requested that information be provided with respect to measures taken to implement its provisions dealing with economic and social rights. They recalled that, in the 1960s, banks and other employers had preferred light-skinned employees for jobs involving contacts with the public, thus discriminating against people with darker skin, and asked whether that was still the case.

157. The representative of Jamaica, replying to the questions asked and comments made by the members of the Committee, said that Jamaica had chosen not to submit its outstanding periodic reports because it had not yet been able to adopt the legislation required to implement article 4.

158. With regard to article 5 of the Convention, the representative said that, in the past, light-skinned people had, indeed, been preferred for certain jobs, but that was no longer the case; people of all colours were now treated on an equal basis.

### Concluding observations

159. In concluding the review, the Committee expressed its regret that Jamaica had not submitted

a report since 1985. It expressed its appreciation for the attendance of the representative of the State party and the explanation offered for the lapse in reporting.

160. The Committee expressed the hope that it would receive the next report in due time, together with a core document, and that the report would be in accordance with the reporting guidelines. In particular, it hoped that, by that time, Jamaica would be in a position to withdraw its reservation concerning article 4 of the Convention.

161. As the demographic information supplied with the previous report was in some respects problematic, Jamaica was requested to clarify the demographic aspects in its next report.

## **CERD A/57/18 (2002)**

127. The Committee considered the eighth to fifteenth periodic reports of Jamaica, submitted as one document (CERD/C/383/Add.1), at its 1511th and 1512th meetings (CERD/C/SR.1511 and CERD/C/SR.1512), held on 14 and 15 March 2002. At its 1521st meeting (CERD/C/SR.1521), held on 21 March 2002, it adopted the following concluding observations.

### **A. Introduction**

128. The Committee welcomes the submission of the eighth to fifteenth periodic reports of Jamaica as well as the additional information provided by the delegation during its oral presentation. While regretting the limited information provided in the report, including with respect to follow-up to previous concluding observations, the Committee expressed appreciation for the opportunity to renew its dialogue with the State party after a lapse of more than eight years.

### **B. Positive aspects**

129. The Committee welcomes the enactment of the Public Defenders (Interim) Act (1999), which created the office of the Public Defender to protect and enforce human rights and provide a remedy for the infringement of those rights.

### **C. Concerns and recommendations**

130. The Committee notes that the State party has undertaken a constitutional review process intended, *inter alia*, to provide for the enactment of a Ratification of Treaties Act to ensure the incorporation of international treaty obligations into domestic legislation. Noting that this activity has been under way for some time, the Committee encourages the State party to take further measures to finalize the review process and to submit relevant information concerning this matter in its next periodic report. The Committee also wishes to receive more specific information concerning the implementation of the “fundamental rights and freedoms” provided in section 24 of the Constitution, especially those aimed at addressing discrimination based on race, colour or ethnic origin.

131. The Committee reminds the State party that it has difficulties in accepting the mere assertion made by States parties as to the absence of racial discrimination in their territory. The Committee also reminds the State party that the absence of complaints by victims of racial discrimination could indicate a lack of awareness of available legal remedies. It encourages the State party to reconsider its position concerning racial discrimination in its territory and to implement effective measures to address direct and indirect discrimination. Moreover, the Committee recommends that the State party take appropriate measures to inform the public of the availability of legal remedies for victims of racial discrimination. It further requests the State party to include in its next periodic report statistical information on possible prosecutions in cases related to racial discrimination.

132. The Committee is concerned about the absence in the State party of specific legislative, administrative and other measures which aim to give effect to article 4 of the Convention, especially



article 4 (b), prohibiting racist organizations. The Committee underlines the obligations of the State party under the Convention and reiterates its view as to the preventive role of such measures. In this connection, the Committee also draws the attention of the State party to its general recommendation VII and general recommendation XV, affirming the compatibility of the prohibition of the dissemination of ideas based upon racial superiority or hatred with the right to freedom of opinion and expression. The Committee urges the State party to give due consideration to adopting the necessary legislation to comply with article 4, particularly article 4 (b), of the Convention as a matter of priority.

133. The Committee again suggests that the State party consider withdrawing its reservation to article 4 of the Convention.

134. It is regretted that the State party report did not include sufficiently adequate information on article 5 of the Convention to enable the Committee to examine effectively the situation of civil and political rights as well as economic, social and cultural rights as they relate to the various ethnic groups in Jamaica. The Committee recommends that the State party include in its forthcoming report information concerning the measures taken to implement article 5 of the Convention.

135. The Committee expresses concern about the limited information, including relevant demographic statistical data, provided in the State party report. While noting the State party's statement that it does not compile data based on race and ethnicity, the Committee recalls the importance of data, which enable it to assess the situation of minorities in a given State. In this regard, it urges the State party to reconsider its position and to provide information in its next periodic report on the following issues: (a) the ethnic composition of the population, and in particular statistical data relating to the numerically small ethnic groups; (b) disaggregated data on the employment of different racial groups in government service in different sectors.

136. The Committee notes the absence of any reference in the report to the contribution of civil society organizations in the promotion of ethnic harmony, and expresses its hope that the next periodic report will reflect the contribution of such organizations, particularly those dealing with issues related to combating racial discrimination, including raising awareness about the Convention.

137. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at national level.

138. The Committee recommends that the State party consider the possibility of making the optional declaration provided for in article 14 of the Convention.

139. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

140. The Committee recommends that the State party's reports be made readily available to the

public from the time they are submitted and that the Committee's observations on them be similarly publicized.

141. The Committee recommends that the State party submit its sixteenth periodic report together with the seventeenth report, due on 4 July 2004, as an updating report responding to all the points raised in these concluding observations.