

BAHAMAS

Follow-up - State Reporting Action by State Party

CERD A/59/18 (2004)

Annex VI Comments of States Parties on the Decisions and Concluding Observations Adopted by the Committee

Fifth to fourteenth periodic reports of the Bahamas

The following comments were sent on 18 June 2004 by the Permanent Representative of the Bahamas to the United Nations concerning the concluding observations adopted by the Committee following the consideration of the fifth to fourteenth periodic reports submitted by the State party:¹

□ Where no specific comments are offered, The Bahamas has taken note of the recommendations and will forward them to the appropriate authorities for consideration and follow-up, as was indicated during the dialogue between The Bahamas □ delegation and the Committee on 27 February 2004.

□ Concerning paragraph 3 it was not made clear to The Bahamas □ delegation during its dialogue with the Committee exactly what information the Committee felt was missing from the report regarding the practical application of the Convention. The delegation provided information during the course of the dialogue that supplemented that already contained in the report, regarding the application of the Convention in internal law, and the anti-discrimination provisions in The Bahamas Constitution. Accordingly, The Bahamas would welcome further clarification from the Committee as to the information it feels is missing.

□ Concerning paragraph 14 as indicated during the course of the dialogue with the Committee, The Bahamas Government is unaware of any □ reports of statements and press articles inciting racial discrimination against migrants □. It will be recalled that the delegation had requested of the Committee, in its dialogue with the Committee on 27 February 2004, information regarding the sources of these reports. In light of the Committee □s recommendation to conduct an inquiry into these allegations, The Bahamas would once again request that the Committee provide the relevant information regarding the sources of these reports, so that the allegations may be properly investigated.

□ Concerning paragraph 15 as indicated during the course of the dialogue with the Committee, the Employment Act of 2001 provides for legal protection and integration as it precludes discrimination in the workplace, regardless of legal status.

□ The impact of the policy of Bahamianization on the economic and social standing of

migrants does not arise given its definition as stated in paragraph 204 of The Bahamas' report. It should be understood that Bahamianization applies primarily to skilled services, such as banking, for which work permits are required for foreign nationals, with the stipulation that training should also be provided to eligible Bahamians to eventually perform these tasks. This is essentially for the purposes of building national capacity and the knowledge and skills base of the Bahamian populace to allow them to participate effectively in the global economy. It is therefore not seen as discriminatory in nature against non-citizens per se, but rather as a policy designed to build national capacity, and empower more Bahamians to participate effectively in the economic development of the country.

□ With respect to Haitian immigrants, the vast majority of them are employed in areas to which Bahamians are not attracted and for which no Bahamianization policy exists, such as farming, gardening, domestic help, etc., while migrants from other countries tend to be employed in the skilled services such as banking, insurance, accounting, etc. to which the Bahamianization policy does apply.

□ With respect to housing, the policy of the Government of The Bahamas is to provide affordable housing for all Bahamian citizens. However, irrespective of this policy, should a legal resident apply for affordable housing, their application is given equal consideration, based on information provided by the applicant.

□ In light of the above, it is the Government's position that the policy of Bahamianization in employment and housing has little, if any, effect on migrants' living conditions.

□ With respect to the overall question of the living conditions of migrants, it should be recalled that The Bahamas' delegation indicated that living conditions vary in different migrant communities. It is a fact that living conditions in some communities of Haitian migrants are not ideal, as they are characterized by poorly constructed dwellings, many of which have electricity and running water through illegal means only. However, as stated during the dialogue, it should be noted that the Government takes steps to impose some health and safety regulations on these communities, including through a process of environmental health inspections to ensure proper sewage and garbage disposal. Residents of these communities also have access to basic social services in the wider communities, including health and education.

□ It will be recalled that the delegation also informed the Committee that there are other areas of congregation of migrants, including the wealthy enclaves of Lyford Cay and Port New Providence in the capital city, where a number of foreign-born citizens and permanent residents make their homes. The living conditions in these areas far exceed that of the average Bahamian.

□ Concerning paragraph 17 as stated during the dialogue with the Committee, it is the case that persons who are intercepted entering The Bahamas without proper documents may face detention. As far as The Bahamas is aware, detention of undocumented migrants during the determination of their status is a widespread, logical and accepted practice across all countries,

developed and developing. However, The Bahamas wishes to reiterate that detained undocumented migrants are treated humanely and are subject to screening procedures on an expedited basis, to determine their medical and immigration status.

□ Once the screening process is satisfied in accordance with international safeguards, every effort is made to return persons to their country of citizenship or legal residence before they are detained. Once we are satisfied that the individual is not in need of international protection, and is eligible for repatriation to his or her homeland, the necessary arrangements are made.

□ As indicated to the Committee, detention rarely lasts longer than a few days. With respect to the Committee's mention of reports of detention lasting □ a year and more, depending on migrants' nationalities, this assertion was not put to the delegation during the dialogue. The Bahamas would have welcomed an opportunity to question the source of such reports and to address this assertion directly during the dialogue. Once again, should the Committee wish to provide information on the source(s) of this assertion, The Bahamas would be happy to address it as appropriate.

□ The Bahamas takes note, however, of the Committee's recommendation to institute a right of appeal against a detention order.

□ Concerning paragraph 18 The Bahamas wishes to point out that this concern regarding asylum-seekers was addressed thoroughly during the delegation's dialogue with the Committee. In the interest of the fullness of the record, however, the information provided to the Committee will be repeated.

□ With respect to the guaranteed protection of asylum-seekers against return to a country where their lives or health would be at risk, the guarantees are those found in the 1951 Refugee Convention and its 1967 Protocol, to which The Bahamas is a State party. The provisions of these instruments are strictly adhered to by the relevant Bahamian authorities in respect of all asylum-seekers. Furthermore, as previously indicated, there is constant collaboration with the Office of the United Nations High Commissioner for Refugees (UNHCR), to ensure that screening procedures are in consonance with international safeguards and norms. This would include, as a matter of course, the provision of information, interpreters, legal assistance and judicial remedies.

□ All Immigration Officers in direct contact with prospective asylum-seekers, which would amount to approximately 80 per cent of the staff of the Department of Immigration, have received training from UNHCR. Relevant Officers of the Royal Bahamas Defence Force, the Royal Bahamas Police Force and the Ministry of Foreign Affairs are also included in this training. Most recently, UNHCR representatives conducted a re-training session on status determination, from 24 to 25 February 2004.

□ Since 1995, The Bahamas has granted asylum to 102 persons. The number of applications received varies from year to year. In 2001, one case was recommended for refugee status, and in 2002, three cases were recommended. During 2003, 13 petitions were received, 6 of which were

recommended for refugee status, having undergone the review process described above.

□ Every effort is made to identify individuals in need of protection through the established procedures to ensure non-refoulement. UNHCR Officials (Washington Office) are fully involved in the determination process, and assist with case assessments. Once a recommendation has been made that an individual is eligible for refugee status, efforts are made to release such individuals from detention and place them with sponsors, pending a final decision on their status.

□ Concerning paragraph 19 as indicated during the dialogue, The Bahamas is indeed in the process of ensuring the application of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in internal law. A bill has been drafted for this purpose and is currently awaiting approval by the Cabinet. With respect to the principle of non-refoulement, as indicated above, The Bahamas adheres strictly to the provisions of the Convention and Protocol, and therefore observes full respect for this principle.

□ Concerning paragraph 20 The Bahamas is very concerned that the reports of which the Committee speaks regarding conditions at the Carmichael Road Detention Centre were not brought to the attention of The Bahamas delegation during its dialogue with the Committee. The Bahamas would have welcomed an opportunity to question the source of such reports and to address this issue directly during the dialogue.

□ The delegation did in fact provide information regarding the conditions at the detention centre, as well as the services and facilities provided by a consortium of government agencies. In the interest of the fullness of the record, however, the information provided to the Committee will be repeated.

□ The Department of Social Services provides food and clothing. The Ministry of Health provides regular health care. Dorms are provided at the Detention Centre, which are separated into male, female and family areas. The illegal immigrants are not detained for more than a few days, usually no more than a week maximum, which does not give rise to the need to provide schooling for the children. Those who are in need of medical treatment are taken to the hospitals or clinics. Detainees at the Detention Centre are always treated humanely. This is evidenced by illegal immigrants being detained at the purpose-built Detention Centre, rather than in prison, which unfortunately is the case in many other countries in the region. Housing in the Detention Centre also facilitates the processing of immigrants to determine their status. The Detention Centre is visited constantly by international authorities such as those from UNHCR. With respect to issues of access to the Detention Centre by non-governmental organizations, access is granted to NGOs and other concerned entities upon request.

□ The detention centre is governed by a □ cost sharing □ arrangement between several government ministries, representing a collaborative effort whereby a wide range of services are provided to illegal migrant detainees quickly, comprehensively and free of charge.

□ These □ cost sharing □ arrangements are divided among four government ministries as

follows:

The Department of Immigration, Ministry of Labour and Immigration provides 20 Immigration Officers to manage the Centre, the raw material for the food, basic non-prescription drugs and Refugee Kits which include toiletries, toothbrush and toothpaste, blankets, etc.;

The Ministry of Social Services and Community Development provides cooks to prepare the food, assistance with the sorting of clothing from the Department of Immigration, and other services;

The Ministry of Health conducts regular Health Clinics and provides free prescription medication; and

The Royal Bahamas Defence Force provides electricity and water and 40 Officers for security.

□The Department of Immigration, Ministry of Labour and Immigration, provides a rotation of twenty (20) Immigration Officers to manage the Centre. Persons held in the facility receive three meals daily. The facility is equipped with electricity and running water. Four buildings are used as dormitories, each equipped with approximately 60 beds and with bathing and laundry facilities at the rear. Regular visits are allowed twice a week during scheduled hours; however, special consideration may be given to international visitors who arrive during unscheduled visitation periods to accommodate their timetable.

□The overall cost to these ministries accounts for approximately 5-6 million dollars per annum, with an additional 1 million plus for repatriation expenses. These figures do not include the significant financial outlay for fuel costs to patrol the extensive coastline of The Bahamas Archipelago, nor the salaries of support agencies such as the Consular Division of the Ministry of Foreign Affairs and the legal services of the Attorney-General's Office. In addition, for the current fiscal year 2003-2004, the Government of The Bahamas has already earmarked in the budget of the Royal Bahamas Defence Force \$186,230.00 for the construction of a Detention Centre on the island of Great Inagua. Additional funding is anticipated.

□The management of illegal immigration has had a profound effect on the budgets of all the agencies concerned. It practically depletes most of the financial resources of some agencies and places a huge burden on the already limited available human resources. It is expected that there will continue to be a dramatic increase in the illegal migration population, with attendant costs to the mentioned agencies. There appears to be no end in sight for the diminishing of the costs associated with the processing of illegal immigrants. The situation has become exacerbated to the point where assistance is being sought from other Governments and international organizations such as the IOM, and there has had to be the imposition of visas for countries posing particular problems in this regard.

□ Concerning paragraph 21 the issue of racial reconciliation was also addressed during the dialogue; however, The Bahamas wishes to repeat the information given at that time, namely that The Bahamas feels that this has been an ongoing process since the advent of majority rule in 1967 and that great strides have been made in this regard. The One Bahamas Celebration is a wonderful demonstration of this process, encompassing communities throughout the entire archipelago, and involves Bahamians of all races. In this context, the delegation also provided information regarding the International Cultural Weekend held every October in which representatives of over 50 nationalities residing in The Bahamas display their art, culture, food and traditions. The event has been a resounding success since its inception as one of the national initiatives of The Bahamas to commemorate the 50th anniversary of the United Nations, and is enjoyed by Bahamians of all walks of life. Our racial reconciliation activities have been ongoing for some time and will continue, as appropriate, within our cultural context.

□ Concerning paragraph 22 The Bahamas feels that the issue of the absence of decided court cases in The Bahamas regarding racial discrimination was addressed rather exhaustively during the dialogue. In the interest of the fullness of the record, however, the information provided to the Committee will be repeated.

□ No racial discrimination case has yet been brought before the court because no application has been filed and no allegations made. As indicated during the course of the dialogue, while there is no specific legislation in place prohibiting racial discrimination per se, there are prohibitions on all forms of discrimination entrenched in The Bahamas Constitution. Chapter III of the Constitution, articles 15-27, spells out the entrenched Fundamental Rights and Freedoms of the Individual in The Bahamas, which are applicable to all persons in The Bahamas, regardless of race and ethnicity. The Constitution guarantees to all the right to life, liberty, security of person and protection of law; freedom of conscience, expression, association and assembly; and protection of privacy of the home and other property. Articles 15 and 26 explicitly prohibit the promulgation of laws that are discriminatory either in themselves or in effect. In addition to these Constitutional provisions, there are some cases of specific legislation that impose prohibitions on discrimination within specific fields, such as employment and extradition. In the case of employment, for example, the Employment Act prohibits discrimination on the basis of race, creed, sex, marital status, political opinion, age or HIV/AIDS. Accordingly, it is the view of The Bahamas Government that there is a sufficient legal framework in place to facilitate the pursuit of legal matters in this area.

□ With respect to the issue of awareness by the population of their rights, and their confidence in the appropriate authorities, officers of the Royal Bahamas Police Force, as part of its Community Policing Program, during their walk-about, inform members of the community of their rights to report any infraction that has been committed against them, either by the Police or any member of the community. The Police Force has also employed many persons of Haitian descent, with a view to enabling Haitians to feel comfortable in reporting any acts that may have been committed against them to these officers without fear of reprisal.

□ These programmes will continue, so as to ensure that all persons feel that they have recourse to the courts and any other institution of redress, should allegations of racial discrimination

arise.

□The Bahamas finds the Committee's insistence on an investigation somewhat unusual given that the delegation addressed this issue rather exhaustively during the dialogue and given that it is a request for an investigation into something that has no form to date. As indicated above, every effort is made to ensure that all persons in The Bahamas are aware of their rights and have confidence in the authorities' ability to promote and protect those rights. The Bahamas would also respectfully suggest that it would be very difficult, if not impossible, to verify the reasons behind an absence of complaints, as it would be tantamount to attempting to prove a negative. However, as indicated during the dialogue and in the reports, the authorities in The Bahamas, particularly the Courts, are willing and able to hear such cases, if any cases are brought.

Concerning paragraph 24 with respect to the issue of providing information to the general public about the substance of the Convention, it will be recalled that The Bahamas delegation, during its dialogue with the Committee, noted that the Convention has not been given a high profile in The Bahamas.

□It will also be recalled, however, that the delegation welcomed the opportunity posed by the occasion of the presentation and consideration of this report to sensitize the Bahamian public as to the provisions of the Convention and its application in The Bahamas.□

Notes

1/ See paragraphs 18-45 of the present report. The comments refer to the unedited version of the concluding observations.