

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD) 70<sup>TH</sup> SESSION ANTIGUA AND BARBUDA, INITIAL TO 9<sup>TH</sup> REPORT

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### Information submitted to the committee

Antigua and Barbuda submitted its 1<sup>st</sup> to 9<sup>th</sup> reports<sup>1</sup> (due on 24 November 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, and 2005) along with written responses<sup>2</sup> to the questions put by members of the Committee on the Elimination of All Forms of Racial Discrimination (the Committee).<sup>3</sup> The delegation stated that the report was a result of numerous discussions within Antigua and Barbuda Ministries, and was composed of two parts. The general comments section describes the geography, population structure, demographic indicators, political and administrative structure, and government policies related to on racial discrimination. The substantive section lists a number of provisions in the Constitution of Antigua and Barbuda and domestic laws in relation of certain articles in the *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>4</sup> (the Convention).

<sup>1</sup> CERD/C/ATG/9, 29 March 2006 available at <http://www.ohchr.org/english/bodies/cerd/cerds70.htm>. The delegation also made some oral revisions on sections of the report. These included statistical figures of women-headed households should be 43% instead of 13.9%, and the fact that the Freedom of Information Act was passed in 2004, instead of in the process of being drafted, as written in paragraph 39 of the State report.

<sup>2</sup> The response of the delegation of Antigua and Barbuda to the Committee is available at [http://www.ohchr.org/english/bodies/cerd/docs/70writtenreplies\\_antigua.doc](http://www.ohchr.org/english/bodies/cerd/docs/70writtenreplies_antigua.doc).

<sup>3</sup> CERD/C/ATG/9, available at <http://www.ohchr.org/english/bodies/cerd/docs/LOantigua-barbuda.pdf>

<sup>4</sup> Available at <http://www.ohchr.org/english/law/cerd.htm>

Most Committee members expressed their concern with the report's lack of statistical data, especially in relation to ethnicity and minorities. The delegation replied that Antigua and Barbuda's latest census in 2001 did not make any assessment on natural ethnic origins, but it has conducted a Poverty Assessment Initiative that will enable them to include statistical data on racial and national origin in the future. The delegation promised to try to submit relevant information at a later date.

However, most Committee members acknowledged Antigua and Barbuda's commitment to engage in open dialogue, despite the fact that its report was long overdue. In its concluding observations published on 14 March 2007,<sup>5</sup> the Committee invited Antigua and Barbuda to make every effort to respect the deadlines for submission of its future reports, and to provide sufficient information on the implementation of the Convention.

The State delegation consisted of two members: Mrs. Karen A. de Freitas-Rait (Deputy Solicitor General, Antigua and Barbuda Ministry of Legal Affairs) and Ms. Gillian Joseph (First Secretary, Permanent Mission of Antigua and Barbuda to the UN). There were no NGO reports submitted to the Committee.

## Themes and issues<sup>6</sup>

### The Convention and domestic law

Antigua and Barbuda is an independent State, with its own Constitution that ensures fundamental human rights, including freedom from racial discrimination for both citizens and non-citizens. The delegation made a comparison of the definition of racial discrimination in the Constitution<sup>7</sup> to ensure that sufficiently complied with the definition as provided by the Convention.<sup>8</sup> On the one hand the Constitution's definition is narrower, as it is limited to the prohibition of discriminatory laws and discriminatory treatment by persons acting under the law or in a public capacity. On the other hand, the definition has a broader scope which includes political opinions or affiliations, creed and sex. In its concluding observations, the Committee invited Antigua and Barbuda to include "national or ethnic origin" among the prohibited grounds of discrimination in article 14 of the Constitution.

The delegation proceeded to state that the people of Antigua and Barbuda are relatively homogenous,<sup>9</sup> and human rights violations are mostly driven by economic issues rather than questions of racial or ethnic origin. For this reason, the Government of Antigua and Barbuda felt there was no need for a specific National Plan of Action to provide special measures for a certain racial or ethnic groups, to introduce criminal legislation, or any to institute any further provisions in the implementation of the Convention.

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<sup>5</sup> CERD/C/ATG/CO/9, March 2007, available at <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.ATG.CO.9.pdf>

<sup>6</sup> For a more detailed description of the process, please check the press release at [http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/AB14CF2F7A7DFDECC1257291003A8C27?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/AB14CF2F7A7DFDECC1257291003A8C27?OpenDocument)

<sup>7</sup> The Constitution of Antigua and Barbuda, Section 14.3, stated that "... 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed, or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description."

<sup>8</sup> Article 1 of the Convention defines 'racial discrimination' as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

<sup>9</sup> The 2001 statistics conclude that of the 76,886 people in Antigua and Barbuda, based on skin color, 91% are blacks, 4% mixed and 2% whites.

The Committee's Country Rapporteur for Antigua and Barbuda, Mr. Luis Valencia Rodriguez, aligned his concern of this limited incorporation with the fact that, according to paragraph 30 of the State report, international human rights instruments are not automatically determined to be national law unless active measures are taken to adopt them into national law. In its concluding observations, the Committee strongly recommended that Antigua and Barbuda ratify the amendments to Article 8, paragraph 6 of the Convention, which urged State parties to accelerate their domestic ratification procedures.

### **Declaration and reservation**

Antigua and Barbuda posited a declaration on Article 4 and a reservation on Article 14 of the Convention.<sup>10</sup> It also declared that acceptance of the Convention does not imply the acceptance of obligations going beyond the constitutional limits, nor the acceptance of obligations to introduce judicial processes beyond those provided in the Constitution.

The Committee recalled Antigua and Barbuda's commitment to the Durban Declaration and Program of Actions, which urges that State Parties retain and if appropriate withdraw any reservation and declaration from the Convention. Mr. Linos-Alexander Sicilianos reiterated that states should not invoke national law in order not to implement international obligations, and reminded the delegation to examine the compatibility of its declaration with the goal of the Convention, particularly in light of the central role and mandatory character of Article 4 in the struggle against racial discrimination.<sup>11</sup> The delegation stated that the Government had no plans to date to change its position.

In its concluding observations, the Committee strongly encouraged that Antigua and Barbuda withdraw their declaration and reservation, in addition they also urges Antigua and Barbuda to make the optional declaration provided for Article 14.

### **Measures of implementation**

The delegation detailed that fundamental rights and freedoms are protected under Articles 3 and 14 of the Constitution and can be invoked directly before the ordinary courts. The procedures also provide for monetary compensation. Legal aid clinics ensure that the poor and underprivileged have access to legal representation, without regard to race or national origin.

Responding to a question put by Mr. Valencia Rodriguez, the delegation explained that the Government created an Office of Ombudsman as independent and impartial body with an open door policy for hearing complaints in respect of Government policy or action. It is expected that recommendations received from the Ombudsman are designed to enhance Government's performance in those areas. To carry out its role, the Office of the Ombudsman is provided with legal and investigative staff and a budget enshrined by the Constitution.

In its concluding observations the Committee recommended that Antigua and Barbuda establish a National Human Rights Institution in accordance with Paris Principles, although the delegation had already mentioned in the dialogue with the Committee that the absence of any such institution is by reason of limited human and financial resources.

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<sup>10</sup> Article 4 of the Convention provides the obligation of States parties against propaganda and all organizations based on theories of racial superiority or which spread racial hatred and discrimination. Article 14 (1) deals with the Committee's competence in handling communications and complaints from individuals or group of individuals claiming to be victims of violations by State Parties, while Article 14(2) gives state that made the declaration under Article 14(1) the option of indicating a national body responsible for receiving these complaints.

<sup>11</sup> CERD General Recommendation No. XV on organized violence based on ethnic origin (Art.4), 23 March 1993. Available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e51277010496eb2cc12563ee004b9768?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e51277010496eb2cc12563ee004b9768?Opendocument)

## Migrants and non citizens

Some Committee members paid special attention to the condition of migrants in Antigua and Barbuda.<sup>12</sup> The delegation stated that the Government are continuing to encourage illegal immigrants to legalize their status by enacting the *Millennium Naturalization Act*, with a requirement that they show a valuable contribution to the society of Antigua and Barbuda, through employment or other means. A foreigner marrying an Antiguan may also obtain citizenship after 3 years of marriage.

The delegation also clarified that the Government did not segregate migrant groups, but that immigrants tend to voluntarily segregate themselves. Concerning legislation targeted at non-citizens, the delegation stated that this was clearly applied to non-citizens as a unit of persons and not to individuals. Examples of these laws are the *Non-Citizens Land Holding Regulation Act* and *Non-Citizens Undeveloped Tax Act*. These provisions were created because of a limited land resource that needs to be balanced between agriculture, tourism and other use. The legislation is also intended to encourage non-citizens to develop the land rather than to own the land for speculative reasons. These exceptions are in keeping with Article 1(2) of the Convention, which states that the “Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”

Mr. Morten Kjaerum and Mr. Patrick Thornberry reiterated the Committee’s General Recommendation XIX on racial segregation and apartheid and in its concluding observations the Committee requested that Antigua and Barbuda analyse the reasons behind the concentration of immigrant groups in distinct areas and address any actions of private parties which may result in segregation.

Antigua and Barbuda has not considered ratifying the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)*<sup>13</sup> as it stated that there are no migrant workers in the country.<sup>14</sup> The Committee in its concluding observations nonetheless recommended that Antigua and Barbuda should accede to the ICRMW.

## Indigenous Peoples and Minorities

Ms. Fatimata-Binta Victoire Dah raised the question of the disappearance of the Arawaks as the indigenous people of Antigua and Barbuda. The delegation replied that during the 14<sup>th</sup> and 15<sup>th</sup> century, there was significant loss of life of the Arawaks through war and starvation, colonization, and problems of availability of land. The Caribs, however, are another indigenous group that are still present in Antigua and Barbuda in relatively high numbers.

Mr. Chengyuen Tang questioned Antigua and Barbuda on its definition of minorities and their condition, noting that minorities only become the Committee’s concern if their conditions are worse than the majority population. The delegation stated that the economic condition of minorities much depends on how long they have migrated. Some minority groups such as the Syrians and Lebanese were economically well-established, and were represented in the diplomatic corps and parliament.

In the concluding observations, the Committee recommended that Antigua and Barbuda ensure all ethnic minorities have adequate opportunities to participate in the conduct of public affairs at all levels. It should

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<sup>12</sup> The Ministry of Labour of Antigua and Barbuda reports that in 2001 it granted some 5709 work permits (32 % to Guyanese, 27% to Jamaicans) which implied that 7.43% of the population were non-nationals lawfully working in the country. After two amnesties the Immigration Department estimated that there are remaining approximately 1500 illegal immigrants in Antigua and Barbuda.

<sup>13</sup> Adopted by General Assembly Resolution 45/158 of 18 December 1990, available at <http://www.ohchr.org/english/bodies/cmw/cmw.htm>

<sup>14</sup> In the view of the delegation of Antigua and Barbuda migrant workers are persons coming to Antigua for short term work and may return on a seasonal basis. While Article 1(1) of the Convention on Migrant Workers defines ‘migrant worker’ as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.

also provide in its next periodic report statistical information on the percentage and function of those minority representatives holding public offices and government positions.

Mr. Morten Kjaerum also raised the question of difficulties for immigrants who do not speak English as a first language. The government realized that language barriers can prevent these people from being fully aware of all of their rights. The Government provides ministries with Spanish speaking persons to speak to communicate and to raise issues of concern. If any non English speaking person is arrested or detained person, they should be made aware of the charges in their own language within 48 hours, before the person is brought before a magistrate. Antigua and Barbuda also provides interpreter for non-English speaking people, such as Dominicans, so that they may bring cases to the court.

While Christianity is the major religion in Antigua and Barbuda, there exist religious minorities such as Baha'is, Muslims and Rastafarians, each consisting of less than 1% of the population. Freedom of religion is upheld and the followers traditions are respected in their daily lives, including retaining long dreadlocked hair for Rastafarian men and wearing religious coverings for Muslims.

### **Freedom of movement**

The delegation clarified that restriction to freedom of movement as provided by Article 8 of the Constitution only applies when a person is accused of committing a crime, regardless of their status of citizenship. There is no fundamental difference in this application between nationals and non-nationals, except insofar as a Magistrate may take into consideration a person's place of residence in determining whether to grant bail. Antigua and Barbuda is also a signatory of the Revised Treaty of Chaguaramas and a member of CARICOM (Caribbean Community) Single Market Economy (CSME), which ensures free movement of the citizens of member States between CARICOM countries.<sup>15</sup>

### **Freedom of information and incitement of racial discrimination**

The delegation also clarified that the Freedom of Information Act only addresses access to public information and has no relation to Article 4(a) of the Convention regarding dissemination of ideas based on racial discrimination. The delegation stated that Antigua and Barbuda have a free press. Newspapers are open and are not government regulated. Questions from the public are published and the government may respond or provide services accordingly.

Antigua and Barbuda does not have any legislation which specifically criminalizes language inciting racial violence; however Section 9 of the *Small Charges Act* prohibits the use of abusive and insulting language in public.

In its concluding observation the Committee encouraged Antigua and Barbuda to declare as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, and incitement to racial discrimination, as well as act of violence or incitement to such acts; and to prohibit organisations which promote and incite racial discrimination.

### **Women**

The delegation of Antigua and Barbuda declared that the State has representations of women in major positions such as one female parliament member, one in the senate, an ombudsman, the governor general, and a member of the commission of police.

Concerning violence against women, the delegation explained that Antigua and Barbuda have enacted the *Domestic Violence Protection Act*. The Directorate of Gender Affairs provides a victim support program,

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<sup>15</sup> CARICOM member states are Antigua and Barbuda, Barbados, Belize, Bahamas, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts & Nevis, Saint Lucia, Saint Vincent and The Grenadines, also Trinidad and Tobago.

emergency assistance, a legal aid department, education and training, all of which are available to every woman regardless of their citizenship, ethnic or racial origin. No specific measures for violence against women have been conducted by ethnic or racial groups, or an assessment of any form of double discrimination suffered by women in Antigua and Barbuda.

## Education

Antigua and Barbuda has a policy of compulsory education regardless of racial origin. It provides children free textbooks, free school uniforms and an ongoing free meal program (although this is still in a limited number of schools). Reports of children of immigrants being refused access to free government schools<sup>16</sup> are no longer the case, according to the Committee. But the Government did admit there is a case of capacity and overcrowding in some schools, yet this applied equally to citizen or non-citizen. If there is any discrimination committed by teachers in school, an investigation would be set up by the Permanent Secretary of the Ministry at the request of the school Principal. An officer would be appointed as head of that inquiry and the investigation would then report to the Permanent Secretary for follow up.

The Committee welcomes the initiatives in the field of education to sensitize students to ethnic diversity. The Ministry of Culture has planned a Diversity Day to take place in May 2007 for the purpose of awareness-raising and promotion of tolerance for intercultural appreciation in an ethnically diverse society. In its concluding observation the Committee recommended that Antigua and Barbuda disseminate broadly the substance of the Convention and raise people's awareness of the opportunities they have to appeal against instances of racial discrimination.

## Employment

The delegation clarified that they did not have an *Equal Opportunity Act*, as questioned by the Committee. However they already have a Labour Code established in 1995 that provides for rights of equal opportunity, equal pay, minimum wages, safe work conditions, freedom from unfair dismissal. Discrimination in employment is considered a criminal offence under the *Act*. Antigua and Barbuda also ratified the *ILO Convention on equal remuneration* in 2003.

## Conclusion and next steps

The delegation of Antigua and Barbuda was very cooperative in the dialogue and appeared committed seeking a response within Government concerning any inputs from the Committee.

In his preliminary concluding remarks, Country Rapporteur Mr. Luis Valencia Rodriguez highlighted topics of concern to the Committee. He identified areas where more information would be appreciated, including the legal framework for minorities, the situation of tourists and measures to protect them, and the issue of segregation. He also stressed that Antigua and Barbuda should ensure follow-up to Article 4 of the Convention, which obliged States parties to condemn all propaganda and all organizations based on theories of racial superiority or which spread racial hatred. This obligation was of special importance and was mandatory for all States. The Government should also consider removing its declaration made under Article 4, which Mr. Rodriguez claimed constituted more of a reservation.

In its concluding observations, the Committee reiterated concerns and suggestions raised in the discussion. The Committee recommended that Antigua and Barbuda submit its tenth and eleventh periodic report (due on 29 November 2009) in a single report, and that the report should be comprehensive and address all points raised in the concluding observations.

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<sup>16</sup> Committee on the Rights of the Child (CRC) Summary Records (CRC/C/SR.993), and CRC/C/28.Add 22 (Antigua and Barbuda Initial Report to the CRC).



## **TREATY BODY MONITOR STAFF**

**Meghna Abraham**, Program Manager, Information Program  
**Gareth Sweeney**, Human Rights Officer, Information Program  
**Eléonore Dziurzynski**, Communications Officer, Information Program

## **AUTHOR OF THE ANTIGUA AND BARBUDA REPORT**

**Jumi Rahayu**, Intern

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