

NAMIBIA

CERD A/39/18 (1984)

399. The initial report of Namibia (CERD/C/101/Add.7), prepared and submitted by the United Nations Council for Namibia in its capacity as the legal Administering Authority for Namibia, was considered by the Committee in conjunction with the introductory statement of the Council representative.

400. In introducing the report, the representative of the Council recalled that Namibia had acceded to the Convention in 1982 and pointed out that while the Council had de jure authority over Namibia, it did not exercise de facto control over that country. It therefore had difficulties in reporting on the current situation and gaining access to full information, and its ability to ensure implementation of the Convention was necessarily restricted.

401. The Council for Namibia had been unable in practice to perform the task of administering Namibia until independence, owing to South Africa's refusal to terminate its illegal presence in that Territory. The persistent threat or use of the veto by some of the Security Council's permanent members had enabled South Africa to persist in its attitude and had, in practice, paralysed effective action by the Council in the administration of the only Territory for which the United Nations had direct responsibility.

402. The representative recalled, in this connection, that in its 1971 advisory opinion, the International Court of Justice had not only declared that the Mandate of South Africa over Namibia had been validly terminated by the General Assembly in 1966, but had also declared the invalidity of most South African legislation with regard to the Territory and the duty of all other States not to extend any kind of recognition to it. The International Court of Justice had found that it was the policy of racial discrimination and apartheid practised by South Africa in Namibia that constituted the fundamental breach of its obligations under the Mandate to develop the Territory for the benefit of its inhabitants, as well as of the obligations it had assumed under the Charter of the United Nations.

403. The representative then informed the Committee that, according to the census conducted in Namibia by the South African authorities in May 1980, the total population of the Territory was over 1 million and included only 75,000 whites. The white 7.5 per cent of the population owned over 40 per cent of the land, while approximately the same land area was shared by the rest of the population. The remaining 20 per cent of the land was South African Government property where most of the Territory's mineral wealth was to be found.

404. Referring to article 2 of the Convention, the representative stated that, while the South Africa administration claimed to have abolished racial discrimination in Namibia in 1978, the introduction that year of the Turnhalle Constitution with its three-tier system based on "ethnicity" proved the opposite. Although legislation which, in theory, abolished racial discrimination on matters falling within the competence of the Territorial Government had been enacted, racial discrimination

remained entrenched in practice.

405. As regards article 3 of the Convention, the representative stressed that the South African Government, far from condemning racial discrimination, had fostered and maintained the structure of discrimination and segregation.

406. In regard to article 4 of the Convention, he stated that no measures had been adopted in Namibia to eradicate and to declare punishable by law the dissemination of ideas based on racial superiority or hatred or to declare illegal organizations promoting such ideas. On the contrary, both the South African administration in Namibia and the second-tier authorities practised institutionalized forms of racial discrimination.

407. With reference to article 5 of the Convention, the representative stated that, in Namibia, although there was ostensibly equal treatment before the organs of administration and justice, equality before the law was not applied in reality. The imposition of martial law in the northern part of the Territory, where most of the black population lived, had imposed a harsher system of justice as well as more severe penalties. In addition, the treatment of black and white offenders in the Territory's jails differed widely in practice. The representative provided detailed information on the discrimination still existing in Namibia in the field of civil and political rights, including the right to leave or return to the country and the right to own property. Security legislation, including ordinances and laws providing for arrests without warrants, detention without trial, and severe sentences for acts judged to be detrimental to the security of the State, as well as the state of emergency in the northern part of the country, had also severely restricted the right to freedom of peaceful assembly and association. In this connection, he informed the Committee that in June 1984, 40 members of the South West Africa People's Organization (SWAPO) had been arrested while requesting the release of political prisoners.

408. As regards the rights relating to employment, the representative pointed out that the formal abolition of apartheid had no effect on employment practices inasmuch as job reservation in Namibia had never been statutory but had been the result of institutionalized custom. He provided ample information on customary job reservation, which was effective because of the influence of white trade unions and the rejection by whites of blacks from positions of authority, and which continued to block the advancement of blacks to higher grades and to a greater share in the national wealth. He also gave detailed information on discriminatory practices applied in Namibia with regard to the right to housing, public health, medical care, social security and social services. With regard to the right to education, he pointed out that, although education had become free for all children between the ages of 6 and 16 since 1981, it was compulsory for white children only. Moreover there was a common national curriculum which in practice contained a marked emphasis on tribal identity. The use of the mother tongues as the medium of instruction until the age of 10 and the disparity in resource allocation placed black children at a very serious disadvantage on entry to secondary schools with all the consequences that that entailed for their future employment opportunities. In addition, he stated that discrimination in respect of transport, hotels, restaurants, cafés, theatres and parks had been officially abolished, but it was unclear how far integration had gone in practice and how effective the rather modest fine for non-compliance had been in ensuring non-discriminatory access to such public facilities.

409. In concluding his introduction, the representative emphasized that the Council for Namibia was deprived of any direct means of affecting the situation. It, nevertheless, attempted to improve the human rights status of Namibians through various projects, subsidized by the United Nations Fund for Namibia, and to improve the educational skills of Namibians for the day when Namibia would achieve self-determination and independence. The United Nations Institute for Namibia at Lusaka, the new vocational training centre for Namibians in Angola, and the various training programmes and scholarships available under the Nationhood Programme for Namibia were designed for that purpose.

410. The Committee stated that the fact that the United Nations Council for Namibia had been able to submit the initial report of Namibia constituted a significant landmark in the protracted struggle of the Namibian people. It also congratulated the representative of Namibia on his extremely enlightening, lucid and comprehensive description of the situation in that country.

411. In expressing its solidarity with the cause of the Namibian people, the Committee affirmed that the horrifying situation in that country was contrary to all the principles of the Convention and its continuation was a matter of deep concern. The Committee referred to the various resolutions concerning Namibia adopted by the United Nations over the years and expressed its firm condemnation of the illegal occupation of Namibia by the Government of South Africa, the imposition of apartheid on the African population and the South African Government's refusal to allow the Council for Namibia to establish itself in the Territory. Regret was also expressed over the use of the veto in the Security Council which had negated the endeavours of the international community to apply sanctions against South Africa.

412. The Committee recalled that, although the United Nations Council for Namibia had been faced with serious difficulties, it had done some highly commendable work, particularly in persuading States to take effective measures to provide information on Namibia and to isolate the racist régime of South Africa. The Committee expressed the hope that the Council would continue to monitor the situation in Namibia and to intensify its activities and that the next periodic report of Namibia could be prepared and presented by a governmental enjoying both the full de jure and de facto powers over the independent State of Namibia.

413. Turning to the provisions of the Convention, members of the Committee wished to receive information, in particular, on the ethnic groups which composed the populations of Namibia, on whether there was a danger that any indigenous group might be exterminated or experience a decline in its population, and on the situation with regard to Namibian refugees.

414. Members of the Committee also requested detailed information on the basic illegal legislation enacted by the South African authorities in Namibia, on the expropriation of land for mining purposes, on the bantustan policy and on how the bantustans of Namibia resembled or differed from the bantustans of South Africa. It was noted that, under the terms of Proclamation AG-8 of 24 April 1980, Namibian society was divided into 11 mutually exclusive groups on the basis of racial origin, and more information was requested on the nature of the groups, their comparative strength and their relative representation in administration and in the public services. It was also observed that detailed information should be provided with regard to those countries and agencies which gave assistance to the racist régime of South Africa in Namibia.

415. In addition, further information was requested on the effectiveness of the measures taken by the United Nations Council for Namibia in connection with article 7 of the Convention.

416. The representative of Namibia referred to the questions raised by the members of the Committee and pointed out that it was not possible to provide adequate replies in every case because of the fundamental difficulties involved in acquiring accurate information concerning the actual conditions in Namibia. However, with regard to the ethnic composition of Namibia, he explained that according to the 1980 census, the largest ethnic group was the Ovambos, with a population of 516,600 followed by the Kavangos, with 98,000, the Damaras, with 83,000, and the Hereros, with 63,000. Other groups, including the Namas, East Caprivians, Bushmen, Rehoboth Basters, Kaokovelders and Tswanas, totalled some 153,000. Furthermore, according to available statistical information, there were 83,000 Namibian refugees: 65,000 in Angola and the rest in Zambia with a few in Botswana.

417. The representative stated that the bantustans in Namibia were not intended to be independent like those in South Africa. As regards the ethnic areas created in Namibia, he stated that the occupants of those areas would not lose their Namibian nationality and they also enjoyed a greater degree of movement in the sense that there were no pass laws of the kind in operation in the Republic of South Africa. With regard to the actual identity of countries with links to the Government of South Africa and with policies which militated against the objective of independence for Namibia, he referred to relevant action being pursued in other forums. He expressed the view that information on the subject could be submitted to the Committee and stated that he would bring the matter to the attention of the Council for Namibia.

418. The representative then referred to the consultation missions which had been despatched on behalf of the Council for Namibia to a number of countries in order to explain the case for Namibian independence and elicit support for its decolonization. He informed the Committee that 1984, missions had gone to the Benelux countries and the European Economic Community, Argentina, Trinidad and Tobago, Australia, New Zealand and Japan. Furthermore, seminars had been held in the United Republic of Tanzania, Yugoslavia and Canada and one was to be held at Geneva at the end of August 1984. A special session of the Council had been held at Bangkok in May 1984.

419. Upon concluding its consideration of the report, the Committee was of the opinion that it should take a strongly worded decision on the situation in Namibia so that the appropriate organs of the United Nations could take the necessary action and the Council for Namibia could let the people of Namibia and the world know how the Committee felt on the question of racism in that country. On the proposal of its Chairman, the Committee agreed to appoint a working group consisting of Messrs. Ghoneim, de Pierola y Balta, Karasimeonov, Sherifis and Yutzis to draft a decision on Namibia to be submitted to the Committee for adoption.

420. At its 693rd meeting, on 20 August 1984, the Committee adopted by consensus, with some amendments, the draft decision presented by the Working Group. For the text, as adopted, see chapter IX, decision 1 (XXX).

CERD A/51/18 (1996)

485. The Committee considered the fourth, fifth, sixth and seventh periodic reports of Namibia, submitted in one document (CERD/C/275/Add.1), at its 1169th and 1170th meetings (CERD/C/SR.1169-1170), held on 13 and 14 August 1996. At its 1180th meeting, on 21 August 1996, the Committee adopted the following concluding observations.

A. Introduction

486. The Committee particularly welcomes the opportunity to engage in a frank and fruitful dialogue with the Government of Namibia and expresses its satisfaction at the presence of an official of the Ministry of Justice. Although several reports were submitted in the past on behalf of Namibia by the Council for Namibia, the consideration of the present report - which may well be considered as an initial report - constitutes the first opportunity for the Committee to assess the implementation of the Convention in Namibia since its independence.

487. The Committee commends the State Party for the frankness of the report and notes with appreciation its general compliance with the guidelines for the preparation of State Party reports. Despite its brevity, the report contains useful information on legal and administrative measures taken to give effect to the Convention, as well as on some difficulties faced in the implementation process. Those difficulties were, however, described in broad terms without details of the concrete steps envisaged to overcome them. Furthermore, the report was lacking economic, social and demographic indicators that would have assisted the Committee in the evaluation of the situation.

488. The Committee expresses its satisfaction with the additional information provided by the representative of the State Party in response to questions asked and observations made by Committee members in the course of the discussion. In that respect, the statement by the State Party's representative that the core document containing information referred to in the guidelines concerning the initial part of reports of States Parties would be submitted in the near future was particularly welcomed.

489. Some members of the Committee recommend that the State Party envisage the possibility of making the declaration provided for in article 14 of the Convention.

B. Factors and difficulties impeding the implementation of the Convention

490. It is recognized that much remains to be done to overcome vestiges of a long period of subjection to colonialism and apartheid. The State Party's efforts towards full enforcement of the principles and provisions enshrined in the Convention have been seriously hampered by continuing resort to a number of out-of-date - although still in force - discriminatory laws of the former Government. It is also noted that some discriminatory social attitudes still prevalent and generally tolerated in certain parts of the population are not conducive to the promotion of the implementation of the Convention.

C. Positive aspects

491. It is noted with particular satisfaction that, despite severe economic and social difficulties, important steps have been taken by the Government since independence to put an end to racial discrimination in all its forms, notably through a remarkable policy of national reconciliation.

492. It is noted with appreciation that the Constitution of Namibia includes a bill of rights which can be invoked before the Courts. Furthermore, the Racial Discrimination Prohibition Amendment Act was adopted in December 1991 and subsequent legislative measures were passed to reinforce it, such as the Land Redistribution Act and the Agricultural Reform Act. Through these constitutional and legislative provisions, certain acts of discrimination and practices of apartheid have been made criminally punishable.

493. It is also appreciated that serious efforts are being undertaken by the Master of the High Court, the Law Reform and Development Commission and the Ministry of Justice to amend or repeal out-of-date or discriminatory legal provisions. Note is taken of the establishment under the Constitution of the office of the Ombudsman with a view to the promotion and protection of human rights.

494. The policy of affirmative action in areas such as education, training and employment is particularly welcomed.

D. Principal subjects of concern

495. Concern is expressed at the subsistence of out-of-date and discriminatory laws and the persistence of practices inherited from the apartheid regime.

496. Concern is expressed at the fact that, despite affirmative measures taken to eliminate social and economic disparities, black people and mixed race people (coloureds) who comprise 95 per cent of the population, still face serious discrimination in many areas, such as access to property, education, employment, health care or housing.

497. Concern is expressed over the persistence of a dual legal system regulating important aspects of personal status, such as marriage and succession. In that regard, it is noted with concern that there remain serious discrepancies in the system applicable to white, coloured and black people under the Administration of Estate Act.

498. Concern is expressed at the extent of persistent discriminatory attitudes still prevalent in certain parts of the population and the private sector, as well as at the insufficient effectiveness of measures taken to overcome those difficulties. It is further noted with concern that there seem to exist instances of discrimination in the public sector on the grounds of ethnic identity.

499. Concern is expressed at the lack of information in the report relating to the implementation in law and practice of article 5 of the Convention, as well as on the situation of vulnerable groups, particularly the San/Bushmen.

500. Concern is expressed about apparent delays in the process of desegregation in the field of education, as well as the persistence of serious difficulties faced by black children in their access

to public and private education, particularly insofar as secondary and higher education are concerned.

E. Suggestions and recommendations

501. The Committee invites the Government to include in its next periodic report information on the points raised in the present concluding observations, as well as on remaining questions posed and observations made by Committee members in the course of the discussion.

502. The Committee recommends that urgent measures be taken to eliminate all remaining discriminatory laws and practices. It encourages the State Party to strengthen measures taken to foster a culture that effectively protects human rights by disseminating as widely as possible information on the international human rights instruments to which it is party and on the outcome of the consideration of the present report, among the authorities responsible for the enforcement of the Convention's provisions, as well as among the general public.

503. The Committee recommends that additional steps be taken to combat racial discrimination in the fields of property, land distribution, education, housing, employment, health care and equitable distribution of resources. Affirmative measures should thus be adopted to overcome vestiges of the past that still hamper the possibilities for black people, including vulnerable groups among them, to have access to secondary and higher education and to enjoy just and favourable conditions of work in the private sector. Similarly, additional measures should be taken in the field of land redistribution.

504. The Committee encourages efforts currently under way by the Master of the High Court and the Law Reform and Development Commission to revise the dual system governing marriage and inheritance. More generally, a systematic study of the domestic law should be undertaken to ensure its full compliance with the provisions of the Convention.

505. The Committee recommends that the State Party provide, in its next periodic report, information on the number of complaints filed and judgements passed on acts of racism or racial discrimination.

506. The Committee suggests that publicity be given to the State Party's seventh periodic report, as well as to the present concluding observations.

507. The Committee recommends that the State Party ratify at its earliest convenience the amendments to article 8, paragraph 6, of the Convention, adopted by the fourteenth meeting of States Parties.

508. The Committee recommends that the State Party's next periodic report be an updating report and that it address all the points raised in these concluding observations.