

PANAMA

CERD 26th No. 18 (A/8418) (1971)

28. From its 56th to its 58th meetings, the Committee proceeded to determine formally its view as a Committee (as distinct from the views expressed at previous meetings, which were those of the individual members) as to which reports were “satisfactory”, in the sense that they furnished all or most of the required information, and which reports were “unsatisfactory” or “incomplete” and therefore needed to be supplemented by further information. The initial report (and supplementary report, if any) of each State Party was put before the Committee separately by the Chairman. Where there was no consensus, the question whether a State Party’s report (or reports) was “satisfactory” or whether, failing that, the Committee wished to request additional information from that State Party, was decided by vote.

...

30. On the other hand, the reports submitted by the following 17 States Parties were considered by the Committee “incomplete” or “unsatisfactory”, in the sense that significant categories of information were either totally lacking or insufficiently provided in them: ... Panama ... At its 58th meeting, held on 23 April 1971, the Committee adopted the text of a communication which it decided to request the Secretary-General to submit to the aforementioned States Parties, in accordance with rule 65 of its provisional rules of procedure. (The text of this communication is reproduced in annex V.)

...

35. [At its fourth session] ... The reports submitted by the following six States Parties were considered “complete”, and the Committee decided not to request them to supply additional information: ... Panama ...

...

C. Examination of the contents of reports from States Parties in order to determine their compliance with the requirements of the Convention

...

2. Action on information supplied by Panama relating to the situation in the Panama Canal Zone

61. In paragraph 3 of its supplementary report, Panama assured the Committee *inter alia* that it was "complying with the principles and provisions embodied in article 5 of the Convention ...". However, subparagraph (1) of paragraph 3, after citing article 66 of the Constitution, which was described as "wholly consonant with the Convention", proceeded to state the following:

"...However, this principle of social justice has been systematically violated by the United States of America in the Panama Canal Zone. In this Panamanian territory which, under the existing Agreements, has been designated for the provision of an international public service, namely, the construction, operation, maintenance and drainage of the Inter-Oceanic Canal, salary discrimination is practised according to a worker's origin. There is one salary scale for Panamanians and another for United States citizens. In innumerable instances, Panamanian workers receive lower salaries although performing the same work under 'equal conditions'. United States citizens, who constitute one quarter of the total labour force, earn more than Panamanians, who constitute three quarters of it. Panama has always protested against the fact that the universal principle of 'equal pay for equal work' is not observed in the Canal Zone. This has been one of the 'causes of conflict' between Panama and the United States. It is clear that in the Panama Canal Zone salary discrimination is practised against Panamanians."

Moreover, subparagraph (p) of paragraph 3 states:

"The right of access to any place or service. Segregation of any kind is inconceivable in Panama. It would be absurd in a country which calls itself the 'melting pot of the races' and 'bridge of the world'. Indeed, one source of conflict which developed at the outset between Panama and the United States was the introduction of racial discrimination, a type of apartheid, in the part of Panama known as the Panama Canal Zone. Until 1959, there existed in that territory what were known as the 'gold roll' and the 'silver roll'. The former covered whites and the latter, all other groups. Schools, shops, cinemas, hotels, clubs, services and so on, were segregated. There was even discrimination in cemeteries. Although the discriminatory 'cards' are no longer in use, the situation persists under different names, particularly with regard to salaries, as has already been noted."

62. The Committee examined this report at the fourth session, from the 63rd to the 66th meetings.

63. Opening the discussion, Mr. Sayegh noted the difficulties posed by the portion of the report dealing with the situation in the Panama Canal Zone: the Committee was informed by a State Party that racial discrimination was being systematically practised on a part of its territory, but by another State which was not a Party to the Convention. He proposed, "tentatively", that the Committee should take note "with deep regret" of the information formally given to it by a State Party, and draw the attention of the General Assembly to "that sad situation". Mr. Tarassov, at the same meeting, agreed that the report posed special legal difficulties, but thought that Mr. Sayegh's proposal was well within the Committee's competence and avoided the legal pitfalls to which he had alluded; however, he suggested an amendment, stating that the Committee did not have the "possibility" to request information from the United States of America, since it was not a Party to the Convention. Mr. Sayegh accepted the amendment, suggesting meanwhile that the word "possibility" be replaced by "competence" - to which Mr. Tarassov agreed.

64. In the discussion which followed, some members questioned the competence of the Committee to deal with the matter and opposed its taking action along the lines proposed by Messrs. Sayegh and

Tarassov. The salient arguments in the lengthy debate may be summarized as follows: 7/

(i) Mr. Sukati asserted that the information contained in the portion of the report which was under

consideration did not relate to article 9 of the Convention; that it was indeed a "complaint" against another State, which nevertheless could not be dealt with under article 11 of the Convention inasmuch as the other State concerned, the United States of America, was not a Party to the Convention; and that the information under examination was therefore "irrelevant" and should not be taken note of. Sir Herbert Marchant associated himself with the conclusion that the information under examination "could not be considered under the terms of article 9 of the Convention".

On the other hand, Messrs. Sayegh, Valencia Rodriguez, and Tomko argued that the information in question had been presented to the Committee in response to its request for additional information in accordance with article 9 of the Convention; and pointed out that the situation was as follows: a State Party, in the course of informing the Committee of the measures it had adopted to give effect to the provisions of the Convention on its territory, singled out one area of its national territory on which, it reported, racial discrimination was being practised. Messrs. Aboul-Nasr and Tarassov denied that the information was submitted to the Committee, or was dealt with by the Committee, as a "complaint" within the meaning of article 11. And Messrs. Dayal, Getmanets, Sayegh and Valencia Rodriguez expressed the opinion that the Committee would be failing its obligations if it were to refuse to take note of information formally submitted by a State Party to the effect that racial discrimination was being practised on its territory.

(ii) Mr. Haastrup also questioned the competence of the Committee to deal with the matter, but for different reasons. He believed that the matter could be dealt with neither under article 15 nor under article 11, but only under article 9 of the Convention, if at all. However, in dealing with the matter under article 9, the Committee would be dealing with the situation in a territory over which the reporting State Party "had acknowledged that it had no jurisdiction". The question of the juridical status of the Panama Canal Zone was of concern to Mr. Rossides also. Messrs. Haastrup, Partsch and Rossides thought that the precise juridical status of the Panama Canal Zone, being relevant to the question at hand, should be carefully determined; and that information on the agreements between Panama and the United States concerning the Zone in question should be requested. Messrs. Haastrup and Partsch thought also that, until this information had been sought and received, the Committee could not proceed to take any action on the report of Panama.

On the other hand, Messrs. Sayegh, Tarassov and Valencia Rodriguez denied that the question of the status of the Panama Canal Zone had any relevance to the work of the Committee: the Zone was part of the national territory of the State Party which submitted the report, and that was sufficient to establish the competence of the Committee to take note of information in the report regarding the practice of racial discrimination on the portion of the territory in question.

^{7/} In the following paragraphs of chapter III, direct quotations from statements attributed to individual members are drawn from the provisional summary records of the Committee.

(iii) The competence of the Committee to deal with the matter was challenged from a third angle. Messrs. Haastrup, Ortiz-Martin, and Partsch questioned the right of the Committee to consider matters involving States which were not Parties to the Convention. Mr. Ortiz-Martin added that, if the Committee decided that it did have that right, it should first give a hearing to the non-Party State.

On the other hand, Mr. Sayegh pointed out that the Convention required such a procedure as Mr. Ortiz-Martin suggested only in article 11, paragraph 5; but, he noted, that procedure applied only to States Parties and only in the case of a complaint submitted and dealt with under article 11, and neither condition obtained in the case at hand. Article 9, he further argued, not only did not require, but in fact forbade, the Committee to seek or to receive information from any source other than the States Parties concerned. Finally, he recalled that the Committee had, over four sessions, examined reports from States Parties without inviting their representatives to participate in the discussions; in fact, in one instance it had rejected the request made by a State Party to participate in the deliberations of the Committee (see para. 88 below). Accordingly, to suggest that the examination of the report of Panama should be conditional upon granting a hearing to the United States of America, which was not a Party, would be tantamount to discriminating against States Parties in favour of non-Party States.

(iv) Mr. Haastrup cautioned the Committee against dealing with the information on the situation in the Panama Canal Zone lest, by doing so, it involve itself in "delicate international political questions", particularly since such questions could more appropriately be debated in other United Nations Organs.

On the other hand, Mr. Valencia Rodriguez, while admitting that "of course, any recommendation to the General Assembly would have political significance", warned that, likewise, "failure on the part of the Committee to bring such a case to the Assembly's attention would have political significance too".

(v) Sir Herbert Marchant, noting that the report of Panama was "not always very precise" and that the Committee "could not ask the United States" for additional information, suggested that the Committee could ask Panama to furnish further information - for "the Committee was duty bound to assemble all the facts of a case before referring it to the General Assembly". Otherwise, the Committee would be "acting on insufficient information". Mr. Haastrup also thought that "the Committee did not have sufficient information to serve as a basis for action".

On the other hand, Mr. Sayegh thought that the information already before the Committee was sufficient to serve as a basis for the limited action envisaged in the proposal before it; and since more far-reaching action would be beyond the competence of the Committee, inasmuch as the United States was not a Party to the Convention and the matter had come before the Committee under article 9 and not under article 11, he saw no reason why the action now proposed should be deferred until the receipt of further information on the basis of which the Committee could not in any case adopt additional measures. Mr. Nasr, however, while opposing postponement of action by the Committee until further information had been sought and received from Panama, nevertheless thought that, once Mr. Sayegh's proposal was adopted, it would be advisable to request additional information from Panama so that the Committee could at a later stage adopt a position that went beyond merely taking note of the information at hand and drawing the attention of the General Assembly to it.

65. While the debate was in progress, several amendments to the proposal before the Committee (Mr. Sayegh's proposal, embodying the text of Mr. Tarassov's amendment, as amended by Mr. Sayegh) were submitted.

66. Mr. Rossides submitted an amendment to paragraph 1 of the proposal. This amendment was later revised by him in the light of suggestions from Mr. Valencia Rodriguez. Mr. Dayal submitted another amendment to the same paragraph, which he later withdrew in favour of the revised amendment of Mr. Rossides. Mr. Haastrup submitted an amendment designed to replace the text of Mr. Rossides' amendment to paragraph 1 of the original proposal; but this amendment also was withdrawn before the vote. Mr. Rossides' revised amendment stated:

"The Committee on the Elimination of Racial Discrimination takes note of the allegations contained in information formally furnished by the Government of Panama to the effect that in part of its national territory known as the Panama Canal Zone, which is under the control of the Government of the United States of America, certain forms of racial discrimination have been and are being systematically practised."

67. To this, Mr. Sayegh proposed two amendments: first, to add the words "with deep regret" after the words "takes note"; and, secondly, to delete the words "allegations contained in".

68. Three amendments to paragraph 3 of the original proposal were submitted. An amendment by Mr. Haastrup, which would have deleted the whole paragraph, was withdrawn along with his amendment to the first paragraph. Mr. Rossides' amendment called for replacing the words "sad situation" by the word "information", while Mr. Valencia Rodriguez' amendment called for deleting the word "sad".

69. In the vote on the amendments to paragraph 1, Mr. Sayegh's first amendment was not adopted, since there were 6 votes in favour and 6 against, with 2 abstentions; Mr. Sayegh's second amendment was adopted by 7 votes to 5, with 2 abstentions; and Mr. Rossides' amendment, as amended, was adopted by 7 votes to 6, with 1 abstention.

70. Of the amendments to paragraph 3, Mr. Rossides' amendment was rejected by 7 votes to 6, with 1 abstention, and Mr. Valencia Rodriguez' amendment was adopted by 7 votes to 6 with 1 abstention. Paragraph 3, as amended, was adopted by 13 votes to none, with 1 abstention.

71. When put to the vote as a whole, Mr. Sayegh's proposal, as amended, was adopted by 12 votes to none, with 2 abstentions.

72. The text of the Committee's decision reads as follows (see also chapter VII, section B, decision 3 (iv)):

1. The Committee on the Elimination of Racial Discrimination takes note of the information formally furnished by the Government of Panama to the effect that in part of its national territory known as the Panama Canal Zone, which is under the control of the Government of the United States of America, certain forms of racial discrimination have been and are being systematically practised.

2. The Committee did not have the competence to request the relevant information on this question from the Government of the United States of America, since the United States of America is not a Party to the Convention.

3. However, the Committee wishes to draw the attention of the General Assembly to this situation.

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211. The initial report of Panama, submitted on 28 January 1970, was considered by the Committee at its third session. It was considered unsatisfactory, and additional information was requested. A supplementary report, dated 8 July 1971, was considered at the fourth session and deemed satisfactory. The second periodic report, submitted on 25 April 1972, was considered at the seventh session (139th meeting).

212. At the beginning of the discussion, it was recalled that, in its previous reports, the reporting State had informed the Committee that in one part of the Panamanian territory - the Canal Zone - United States authorities were “Systematically” practising racial discrimination: that the Committee had, on the basis of that information, adopted a decision, bringing that situation to the attention of the General Assembly; 16/ and that the General Assembly had endorsed the Committee’s decision in resolution 2784 (XXVI) of 6 December 1971. It was also recalled that, at the twenty-sixth session of the General Assembly, the representative of Panama had stated in the Third Committee that he was confident that, as a result of the negotiations being held between the United States and Panamanian Governments, all discrimination in the Canal Zone would be eliminated. In its second periodic report, however, the Government of Panama stated that “racial discrimination does not exist in Panama in any form”. It was observed that, unless the practices attributed in the previous reports to United States authorities had ceased, the statement in the report currently under consideration would appear to contradict the information contained in the earlier reports.

213. The representative of Panama explained that the statement contained in the second periodic report of his Government referred only to the territory under its effective jurisdiction. He stressed that the situation in the Canal Zone had not changed since the submission of his Government’s earlier report. The negotiations referred to by his delegation in the Third Committee had unfortunately become deadlocked, and no agreement had been reached which would make it possible to state that racial discrimination had been eliminated in the Canal Zone. He referred to the series of Security Council meetings held in Panama earlier in the year and quoted part of a statement made by the representative of that country, 17/ which referred to discrimination in regard to salaries, housing and education and to the segregation of blacks.

214. Several members commented on the information contained in the statement made by the representative of Panama, expressed the hope that in its next report the Government of Panama would be able to inform the Committee that the problem had been eliminated and suggested that the Committee should indicate in its fourth annual report to the General Assembly its concern about the situation. Some members, on the other hand, expressed the view that the Committee was not competent to deal with the problem.

16/ [Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 18 (A/8418)], paras. 61-72.

17/ S/PV.1703, pp. 26-30.

215. The Committee decided that the statement made by the representative of Panama should form part of the second periodic report submitted by that country.

216. The representative of Panama informed the Committee that, since the submission of his country's second periodic report, a new Constitution had been promulgated, which embodied considerable improvements with regard to human rights. A new Labour Code had also been enacted. He assured the Committee that the third periodic report of his Government would be fuller, would conform to the requirements of the Convention to the greatest possible extent, and would take into account the comments made by members of the Committee.

217. Some members expressed the hope that the next report, in addition to providing the information to which the representative of Panama referred, would also take into account the guidelines laid down by the Committee and provide the information envisaged in general recommendation III. Some members expressed the hope that, in its next report, the Government of Panama would provide information on any new legislation that might be enacted in accordance with the requirements of the country's new Constitution, and would indicate the steps taken to improve the conditions of the indigenous population whom the Government was seeking to incorporate into the social life of the nation.

218. The Committee expressed the wish that, in the preparation of its third periodic report, the Government of Panama would take into account the guidelines laid down by the Committee and the comments made during the discussion.

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232. It will be recalled that, during the Committee's consideration of the second periodic report of Panama at the seventh session, the representative of Panama had informed the Committee that, since the submission of the report, a new Constitution had been promulgated, which embodied considerable improvements with regard to human rights, and that a new Labour Code had also been enacted. He had also assured the Committee that the third periodic report of his Government would be fuller, would conform to the requirements of the Convention to the greatest possible extent, and would take into account the comments made by members of the Committee. It will be further recalled that several questions had been raised at that session and that the Committee had expressed the wish that, in the preparation of its third periodic report, the Government of Panama would take into account the guidelines laid down by the Committee and the comments made during the discussion (A/9018, paras. 216-218).

233. At the tenth session, the Committee noted with regret that the third periodic report of Panama contained very little of the information it had expected to find in it. Apart from the statements that it was not possible to report on the demographic composition of the country, that no special penal provision had been promulgated, that there was no problem of racial discrimination in the country, that the Panamanian nation had always rejected racial discrimination in the four Constitutions it had promulgated, and that the new Constitution of 1972 had reiterated that principle, the only concrete information contained in the report consisted of the text of article 19 of the new Constitution.

234. At its 212th meeting (tenth session), held on 20 August 1974, the Committee decided that its fifth annual report to the General Assembly should reflect its expectation that the Government of Panama would fulfil its obligations under article 9, paragraph 1, of the Convention as well as its pledge to provide fuller information.

235. Regarding the measures adopted by the reporting State in implementation of its obligations under the provisions of part I of the Convention, it was observed that the scope of the relevant part of article 19 of the new Panamanian Constitution of 1972 was narrower than that of article 1, paragraph 1, of the Convention, to which it corresponded: whereas the former referred to discrimination "because of race, birth" and certain other factors outside the framework of the Convention, the latter referred to discrimination based on "race, colour, descent, or national or ethnic origin". Moreover, with respect to the statement that no penal provision had been promulgated in Panama, it was recalled that the obligations under article 4 of the Convention were mandatory; and it was suggested that the Government of Panama should be requested to specify the legal and penal provisions which corresponded to that article and the manner in which they could be invoked in order to implement its provisions.

236. In a statement he made before the Committee, the representative of Panama stated that, although no specific legal provision had been promulgated, manifestation of racial discrimination could be challenged in the courts as being unconstitutional. Referring to a question raised in the course of the discussion, he said that his country had no cultural, diplomatic or any other relations with the racist regimes in southern Africa.

237. The statement, made in the third periodic report of Panama, that there was no problem of racial discrimination in that country gave rise to the question whether that statement was compatible with the information supplied previously by the Government of Panama - to the effect that certain forms of racial discrimination had been, and were being, systematically practised in the Panama Canal Zone, which was under the control of United States of America (A/8418, paras. 61-72 and A/9018, paras. 212-215).

238. The representative of Panama, in a statement he made before the Committee, said that racial discrimination had continued to be practised in the Panama Canal Zone, but that his Government had made no reference to that fact in the third periodic report because it had confined that report to information on the territory under its effective jurisdiction. He added, in a subsequent statement, that his Government did not feel able to include the question of racial discrimination in the Canal Zone in the report under consideration because negotiation on the question were being held between the Governments of the United States and Panama.

239. At its 212th meeting, held on 20 August 1974, the Committee decided to take note of the fact that the third periodic report of Panama referred only to the territory under the effective jurisdiction of the Government of the reporting State, and to express once again its continuing interest in and concern at the racial discrimination practised in a part of Panamanian territory, as well as its hope that the reporting State would be in a position in the future to report on improvements in that situation.

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188. The fourth periodic report of Panama was considered together with the introductory statement made before the Committee by the representative of the reporting State.

189. It was asked whether article 19 of the Political Constitution of Panama of 1972 - which states: "There shall be no personal privileges or distinctions or discrimination because of race, birth, social class, sex, religion or political ideas" - covered also discrimination based on colour, descent, or national or ethnic origin, as provided for in article 1, paragraph 1, of the Convention.

190. The Committee took note of the information on the situation of the indigenous population, and of the measures taken to protect them against racial discrimination, as contemplated in article 1, paragraph 4, and article 2, paragraph 2, of the Convention. There was some uncertainty, however, whether the objective of Government of Panama was to preserve the customs and traditions of indigenous groups or to integrate them into national society and life. Thus, some members found it difficult to reconcile the provisions of article 102 of the Panamanian Constitution, which states that the State "shall draw up courses of education and development for indigenous groups with their own cultural patterns, to enable them to play an active part in civic life", with the statements in the report, to the effect that "there are no special measures regarding education for the indigenous population, since everything falls within a general plan and policy", that the Indian schools "have the same official programmes and curricula as all other schools in Panama", and that "these programmes and curricula are not adapted to the life of the indigenous population, nor do they make any provision for special instruction in the particular culture of each group". Moreover, some members asked why the law establishing the Department of Indian Affairs and the National Indian Institute, enacted in 1952, had "remained a dead letter", and why the Directorate of Indian Affairs, established at the end of 1971, had been unable to fulfil its specific aims, with the result that the functions of that body and subsequently been delegated to the Directorate for Local Government.

191. In connection with article 3 of the Convention, a member of the Committee inquired whether Panama had acceded to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

192. Several members observed that little information was provided in the report concerning the implementation of the mandatory provisions of article 4, paragraphs (a) and (b), of the Convention; and further information was requested.

193. In connection with article 5 of the Convention, it was noted with satisfaction that the report gave an extremely detailed and precise account of the legislative measures adopted by the reporting State to ensure equality before the law and non-discrimination in health, education and other fields. It was observed, however, that information on the implementation of those legislative measures, through administrative and other actions, would be very useful. While the opening clause of article 20 of the Panamanian Constitution, stating that "Panamanians and aliens are equal before the law" was noted with satisfaction, questions were raised regarding the remainder of the article, which stated: "but for reasons of work, health, morality, public security and the national economy, the law may subject to special conditions or deny the exercise of specific activities to aliens in general". A

member of the Committee asked for further information on the restrictions permitted under that article; another member, while understanding the reasons for limitations based on “health, morality, public security and the national economy”, asked for an explanation of the words “for reasons of work”. Information was also sought regarding the restrictions on foreign workers referred to in article 68 of the Constitution.

194. It was noted that information on the implementation of article 6 of the Convention was lacking; and it was felt that the provisions of article 40 of the Constitution of Panama (“Every person shall have the right to present respectfully worded petitions and complaints to public officials”) might provide excuses for public officials to dismiss petitions and complaints on the pretext that they were not respectful.

195. It was observed that the information in the report purporting to refer to the provisions of article 7 of the Convention related in fact to article 5, paragraph (e) (v) and (vi). It was hoped that the next report would contain information pertaining to the obligations of the reporting State under article 7 of the Convention.

196. The extensive information given in the report on Panama’s actions on the international level with respect to the struggle against racial segregation and apartheid was noted with satisfaction. Referring to the statement in the report that Panama’s legislation “prohibits vessels flying its flag from engaging transport operations involving trade with the racist Government of Southern Rhodesia” and recalling that Southern Rhodesia had no ports, a member of the Committee asked whether the Republic of Panama allowed vessels flying its flag access to South African ports.

197. The demographic information contained in the report was noted with appreciation.

198. Part II of the fourth periodic report of Panama, entitled “Discrimination in the Panama Canal Zone”, was considered together with its annex. Members of the Committee noted with concern the information about racial discrimination and racial segregation contained in that part of the report under consideration. Some members asked, however, whether the reported discriminatory measures and practices were based on race or on citizenship. In particular, it was asked whether the segregation in housing and discrimination in employment and wages were practised as between citizens of the United States and citizens of Panama, or between white United States citizens on the one hand and black United States citizens and Panamanians on the other.

199. The representative of Panama commented on some of the observations and inquiries made by members of the Committee and summarized in the preceding paragraphs. He informed the Committee that his Government had just signed the Convention on the Suppression and Punishment of the Crime of Apartheid. He stated that in the Canal Zone discrimination was practised against non-white United States citizens as well Panamanians. And he assured the Committee that he would communicate the questions put by its members to his Government, and that the additional information they requested would be furnished in the fifth periodic report of his country.

200. It will be recalled that an additional report from Panama, supplementing that country’s initial report and supplying information on the situation in the Panama Canal Zone, had been considered by the Committee at its fourth session and that, after an extensive debate on the competence of the

Committee to take any action on that information, the Committee had adopted its decision 3 (IV) on 26 August 1971 [A/8418, paras. 61-72]. It will be recalled also that the General Assembly had endorsed the Committee's decision in resolution 2784 (XXVI) of 6 December 1971. It will be noted, however, that neither the second nor the third periodic report of Panama had referred to the situation in the Panama Canal Zone, and that questions regarding that situation had been raised by members of the Committee at its seventh and tenth sessions [A/9018, paras. 212-214 and A/9618, paras. 237-239].

201. After some discussion of the competence of the Committee to deal with part II of the report before it and of the kind of action it could take, the Committee approved - at its 332nd meeting - a proposal by the Chairman to establish a working group of six members to draft the text of a statement that would be acceptable to all members of the Committee. The draft proposed by the working group was considered by the Committee at its 334th meeting and, with some amendments, was adopted by consensus. The text of the Committee's decision appears in chapter VIII, section A, decision 2 (XV).

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163. The fifth periodic report of Panama (CERD/C/20/Add.25) was introduced by the representative of the reporting state, who limited her remarks to the question of the Panama Canal Zone, stating that as that enclave had been returned to the Republic of Panama, the Government would be able to ensure that the Convention was applied throughout its territory. Measures to that end were being studied as part of an integrated development programme for the Zone.

164. The Committee welcomed the efforts that the Panamanian Government was making to restore its authority in the Canal Zone and to ensure the implementation there of the International Convention on the Elimination of All Forms of Racial Discrimination, and hoped that the Government would soon be in a position to fully apply the Convention in that part of its territory and to report to the Committee on the progress made in that direction.

165. Much of the discussion revolved around the Government's policy for the indigenous population. A member of the Committee recognized that the chief difficulty in giving effect to the Convention in Panama arose from the country's ethnic composition and its indigenous communities. Another member praised the sincerity of the Government of Panama which acknowledged that as yet there had been no realistic policy for dealing with the indigenous people who had been cut off from the life of the nation. It was recognized that, although the Government of Panama did not claim to have solved the problem entirely, it had made some progress towards a solution in developing a plan of action for the indigenous population with political, economic, social cultural and educational objectives.

166. It may be recalled that with reference to the provisions of article 1, paragraph 4, and article 2, paragraph 2, of the Convention, some members of the Committee, when discussing the fourth periodic report of Panama, had expressed doubts as to whether the objective of the Government of Panama was to preserve the customs and traditions of indigenous groups or to integrate them into the national community and life of the nation. In this connection, the Committee welcomed the new policy of the Panamanian Government which aimed at enabling the indigenous communities to participate fully in the socio-economic development programmes of the country while safeguarding the continuity and promoting the development of their cultures and languages. Members of the Committee noted with satisfaction the establishment of a Commission which had drafted guidelines for the new policy and asked for further information concerning the membership of the Commission and whether the indigenous groups were represented in it. They welcomed the replacement of the dubious concept of indigenous "reserves" by a new socio-economic concept of "comarcas" which would result in the establishment of the communities within which those groups would be able to preserve and develop their own cultures, languages and traditions. A member wondered whether there was any difference, other than a difference of terminology, between the concept of "comarca" and the earlier concept of "reserve". It was noted from the report that the natural resources found within the "comarcas:", were the patrimony of the indigenous population, except for those mentioned in articles 226 and 227 of the Constitution which referred to land and water resources. Further information was requested as to what precisely was covered by those exception clauses of the Constitution. With reference to a statement in the report that the Government planned to hold consultations with the indigenous communities regarding the exploitation of natural resources found

within the “comarcas”, information was requested on how consultations would be conducted in practice and on their results. Inquiries were made as to the manner in which the Government planned to solve the problem posed in a small country by the existence of “pockets” of settlement which were at different stages of economic development; as to whether the land would be given to members of the indigenous groups as private property or it would be exploited on a communal basis; and if those groups would enjoy freedom of movement which was essential for their self-fulfilment as well as their contribution to national development. A member expressed some doubts about the system of “comarcas” and thought the Committee should at some stage examine the issue more closely.

167. It was recalled that during the consideration of the fourth periodic report, the Committee had noted certain short-comings in the implementation of the provisions of article 4 (a) and (b) of the Convention. Members of the Committee noted that Acts Nos. 8 and 11 of 10 February 1978 concerning the offences of calumny and detraction and concerning means of social communication and publication of printed matter, respectively, partly met the requirements of article 4 (a) and (b). It was also noted, with reference to article 4(a), that the only relevant domestic legislation was Act No. 25 of 9 February 1956, article 1 of which declared certain acts of discrimination to be correctional police offences. A member stated that it would be desirable for article 15 of Act No. 11 to explicitly condemn any organized propaganda activities inciting racial discrimination. The Committee asked for more details on the measures taken for the implementation of article 4 (a) and (b) of the Convention.

168. Some members of the Committee commented on the right to equality before the courts. A member pointed out that arrest on grounds of race was not specifically included among the illegal acts resulting from a decision by authorities, officials or public establishments which, according to Act No. 46 of 24 November 1956, could be invoked by an individual in order to apply for a writ of habeas corpus or to exercise the right of amparo. Similarly, article 1 of Act No. 25 of 9 February 1956, enumerating the acts of discrimination committed by individuals or private groups which constituted offences, did not cover all the individual rights guaranteed by the Convention. Those two legislative texts should therefore be supplemented. Another member noted that any person who was the victim of an act of discrimination could apply to the courts, but he wondered whether that person would have to pay the legal costs. He inquired further about the wording of article 3 of Act No. 25 of 9 February 1956 which provided that “the chiefs of police shall be responsible for imposing the penalties specified in this Act in accordance with the relevant administrative regulations” and wondered, with other members, how a chief of police could be responsible for imposing a penalty which provided, for example, for imprisonment. He also questioned the text of article 33 (transitional) of Act No. 8 of 10 February 1978, since it appeared to shed doubt on the universally accepted principle that a crime could be punished only by virtue of a pre-existing law.

169. Finally, the Committee noted with satisfaction the detailed information provided in the report on measures taken to safeguard freedom of information and publication, to support international action against racism, racial discrimination and apartheid.

170. The representative of Panama replied to a number of questions raised by members of the Committee. She answered in detail questions regarding habeas corpus proceedings and also the right of appeal in case an official violated the rights of an individual. With respect to the Panamanian

policy for the indigenous population, she confirmed that a paternalistic attitude was now giving way to one of more direct consultation and involvement. The existence of “comarca”, she stated, did not imply that indigenous communities were cut off from the rest of the population. It was a term which reflected historical development in regard to land distribution in the country. The system of communal or collective ownership of property had been a part of the traditional structure of indigenous society in Panama for many years; however, the right to own private property was enshrined in the Panamanian Constitution. The representative would ensure that other questions were conveyed to her Government for clarification at a later stage.

CERD A/37/18 (1982)

158. The seventh periodic report of Panama (CERD/C/91/Add.1) was considered by the Committee together with the introductory statement of the representative of the reporting State who stressed, in particular, the obstacles that still existed in his country with regard to the implementation of the Convention in the area known as “Panama Canal Zone” over which his Government had not yet restored its authority.

159. The Committee commended the Government of Panama for its excellent and informative report and, in particular, for the measures it had taken at the international level to combat apartheid in accordance with article 3 of the Convention.

160. Referring to the information provided in the first part of the report with regard to the Canal Zone, which was regulated by the Torrijos-Carter treaties of 1977 and in which the Panamanian Government denounced the existence of discriminatory practices, the Committee recalled that it had already informed the General Assembly on previous occasions of its concern at Panama’s inability to implement the provisions of the Convention in a part of its territory and expressed, once again, its hope that Panama’s efforts to recover its sovereignty over the Canal Zone would be successful, thus enabling the Government to implement all the provisions of the Convention throughout the Panamanian territory. It was asked whether the treaties referred to in the report contained a clause relating to divergences in interpreting their provisions and whether the Panamanian Government had submitted the question of the breach of the labour code to the International Labour Organization.

161. The Committee drew particular attention to the implementation by Panama of article 2 of the Convention and especially to the policy of the Government with regard to the indigenous population of the country on which further information was requested. The Committee observed, in this connection, that article 19 of the Constitution of Panama complied substantially with article 2, paragraph 1 (d) of the Convention, but failed to include all the distinctions mentioned in the definition of racial discrimination given in article 1, paragraph 1, of the Convention. It was noted that under article 116 of the Constitution, the State guaranteed to indigenous communities the reservation and the collective ownership of necessary land to ensure their economic well-being, and information was requested on the specific measures taken by the Panamanian Government to implement that constitutional provision. In this connection, some members of the Committee wished to know whether the system of comarcas should be described as integration or integration with assimilation, whether comarcas were zones of settlement, autonomous regions or administrative units and how the system of comarcas worked, particularly in the indigenous zone of Darién established by Act No. 20 of 1957, whether those zones received additional resources, since they appeared to be in a backward state compared with the rest of the country, and whether the resources took the form of credits. With respect to the development of the comarcas, they wished to know whether the Government of Panama intended to create co-operatives, or whether their development was in the hands of private enterprises; and, where a private company held a concession for the exploitation of resources of the subsoil of the territory of a comarca, whether its population benefited from the concession granted to the company. In addition, they asked the amount and distribution of the appropriations earmarked for the development of the regions inhabited by the indigenous populations. In particular, observing that the two indigenous zones defined by Act No. 20 of 1957

were not subject to appropriation, the Committee members inquired whether that applied also the indigenous zones defined by Act No. 18 of 1932 and Act No. 18 of 1934, and what the situation was with regard to the Teribe cultural group, in respect of which no separate indigenous zone was mentioned.

162. With reference to integrationist movements which had developed within the indigenous population of Panama, it was asked whether they involved different indigenous, or ethnically related, groups seeking integration with each other or whether they sought integration with the nation as a whole whether the indigenous groups themselves took the initiative or if it was the Government that endeavoured in that way to ensure their social and economic advancement, and whether measures had been taken to ensure the educational integration of the indigenous populations. It was observed that there appeared to be some inconsistency between the trend towards integration and the official policy of geographical delimitation of the various comarcas, and the question was asked at which level the effort at integration was made and in which spheres the indigenous groups had a special role to play. Members of the Committee also wished to know whether the indigenous populations had their own representatives in the Parliament, the Government and local bodies, and whether it was possible for them to move out of their region and have easy access to work, accommodation and instruction away from the areas where they normally resided; what the composition of the National Commission for Indigenous Affairs was, its role, its powers and its relations with the various ministries and to what extent indigenous leaders participated in that Commission; whether the two representatives of Choco Congress were to serve as members of that Commission or merely in a consultant capacity and how far the Commission influenced the decisions of the National Agrarian Reform Committee. In this connection, it was also asked whether the allocation of farm land to the indigenous populations by the National Agrarian Reform Committee was designed to exclude them from the industrial sector, how far that Committee took part in formulating policies and decisions in the agrarian sector and what, in general, the results were of the indigenous policy established by the Government of Panama. Reference was made in this respect to a statement of the President of the Republic of Panama in which he undertook to guarantee equality for all Panamanians, and information was requested on measures taken to that end. The President had also mentioned the restructuring of the Directorate for Indigenous Affairs of the Ministry of Government and Justice and the Government's Indigenous Policy Department, and the Committee asked how these bodies were made up, how they operated and if they were co-ordinated with each other.

163. The Committee wished to receive further information on specific legislative texts and measures envisaged to comply fully with the provisions of article 4, paragraphs (a) and (b) of the Convention. It was noted that under article 1935 of the Judicial Code "no person who does not enjoy full civil rights may bring a criminal action", and clarification was requested on the meaning of this provision. Clarification was also requested on the texts of articles 2096 and 2227 of the Judicial Code regulating pre-trial detention of the defendant. It was also pointed out that additional information, which had already been requested during the discussion by the Committee of the fifth periodic report of Panama was needed on Acts No. 8 and No. 11 of 1978 and on the legal provisions against racial discrimination on the basis of which the office of the Government Attorney would take action against political parties based on race.

164. In connection with article 6 of the Convention, further details were requested about the practical possibility for victims of discriminatory acts to avail themselves of the various remedies

referred to in the report.

165. Members of the Committee also requested information on what was being done in Panama to give effect to the provisions of article 7 of the Convention and, in particular, whether the measures taken in the sphere of education enabled the various population groups in Panama to reach a better understanding for living together, whether the Spanish-speaking population learned the vernacular languages of some of the ethnic groups, at what level education was provided in the vernacular languages and at what stage Spanish was introduced, whether a pupil whose mother tongue was Spanish was required to learn the language of the ethnic group in which he lived, what methods were used to train indigenous teachers and whether the textbooks used were sufficient to provide education in the various vernacular languages.

166. In replying to some of the questions raised by members of the Committee, the representative of Panama stated that his Government would continue to inform the Committee of the progress made in implementing the treaties concerning the Canal Zone. He then informed the Committee that members of the indigenous population occupied several high posts and, as Panamanian citizens, sat in the National Assembly. Many people of indigenous origin were to be found both learning and teaching at all levels, and in the comarcas education was given in both Spanish and the mother tongue, while urban dwellers could learn indigenous languages. Their various mother tongues enabled members of the indigenous population to retain their cultural links, while integration among themselves and with the rest of the population was made possible through the use of Spanish. Furthermore, the mass media had programmes in the local languages and emphasis was laid on indigenous culture. Indigenous reservations were not areas of confinement but were designed to help the indigenous population to develop; health and hygiene were taught and there was access to modern means of communication. The representative finally stated that the other points raised by members of the Committee would be dealt with in detail in Panama's next periodic report.

CERD A/42/18 (1987)

619. The eighth and ninth periodic reports of Panama submitted in one document (CERD/C/149/Add.4) were considered by the Committee at its 790th meeting, on 11 March 1987 (CERD/C/SR.790)

620. The report was introduced by the representative of Panama, who highlighted some parts thereof and stated that the situation of the indigenous communities and other disadvantaged sectors of the Panamanian population was at the heart of the development strategy of her country.

621. Members of the Committee expressed satisfaction with the report, which conformed to the Committee's guidelines (CERD/C/70/Rev.1) and showed Panama's political will to maintain a fruitful dialogue with the Committee.

622. Members observed that the Government was still unable to implement all the provisions of the Convention in the Canal Zone, where the Panamanian population was disadvantaged in the field of employment, in violation of a bilateral treaty, the Panama Canal Zone Treaty of 1977. They required information in order to assess the situation and to judge what extent those acts constituted discriminatory acts within the meaning of the Convention.

623. In relation to article 2 in conjunction with article 5 of the Convention, members of the Committee requested detailed information about the ethnic composition of Panama and asked how the indigenous population was integrated into the population as a whole. They wished to know how many title-deeds showing either individual or collective ownership had been granted to indigenous communities, how large the indigenous zones were and what percentage of the land had been owned by non-indigenous persons, including private enterprises, prior to delimitation, what progress had been made in transferring land back to the indigenous population, what the renewable and non-renewable natural resources of those regions were, what percentage of the revenue from the activities of non-indigenous private enterprises the indigenous people were receiving, what activities the National Directorate for Renewable Natural Resources carried out in those regions, and what percentage of the national budget and development plans was allocated to the indigenous zones. An explanation was requested concerning the demarcation of the lands of the Guayami community, which might in fact reduce those lands. Concern was expressed at the statement in the report that, in order to control the entry of outsiders into the Cuna reservation, the boundaries had to be fenced, even if that measure was intended to protect the indigenous group, it must be kept in mind that the aim of States must be to integrate indigenous communities into the population and not to isolate them.

624. Members congratulated the Government on its measures to protect the three major indigenous communities. It was to be hoped that those measures would be extended to the other communities. In that context, they inquired about the policy of the Government with regard to the lesser-known indigenous groups and asked whether they were being assimilated into larger groups or could preserve their identity. They also asked what the average per capita income of indigenous communities was, what their employment and literacy rates were, and what percentage of them received secondary and university education.

625. Additional information was requested concerning the draft legislation intended to deal with the status of the indigenous authorities and the participation of the national administrative authorities in the government of the indigenous areas. In particular, it was asked what role the national administration would play and in which areas, and whether any institutional body - an ombudsman, for example - was envisaged to supervise the administration itself. Copies of relevant extracts from the new legislation were asked for. Clarification was requested concerning the powers and functions of the municipalities (cor regimientos) and an explanation was called for about what seemed to be an element of discrimination between the traditional and elected authorities of the Guayami indigenous community as far as equality before the law was concerned. It was also asked what judicial machinery could be used in such cases and the procedure by which the authorities could be removed from office for infringement of the law.

626. Information was requested on specific programs that might be available to make indigenous people aware of their rights under the Constitution and of measures and benefits provided for them.

627. With regard to article 3 of the Convention, members inquired as to whether Panama maintained any diplomatic, consular or trade relations with South Africa and, if so, whether they were negligible or important.

628. Concerning the implementation of article 4 of the Convention, members pointed out that the content of article 39 of the Constitution was praiseworthy, but that the principles enunciated therein must be matched by corresponding penal sanctions, as required in article 4 (b) of the Convention. The hope was expressed that the Government of Panama would see to it that specific legislation was promulgated to give full effect to article 4.

629. As far as article 6 of the Convention was concerned, members asked whether the remedies available to citizens who considered that they had been victims of violations of the rights enshrined in the Convention were prompt and effective and whether they were also applicable in the Canal Zone.

630. Regarding the implementation of article 14 of the Convention, the Government of Panama was invited to consider the possibility of making the declaration under that article recognizing the competence of the Committee to deal with individual communications.

631. In reply to the questions raised and observations made by the members of the Committee, the representative of Panama stated that her Government did not maintain relations of any sort with South Africa. All the questions asked by members of the Committee would be transmitted to the Panamanian authorities, who would see to it that they were answered in the next report.

CERD A/52/18 (1997)

328. The Committee considered the tenth, twelfth, thirteenth and fourteenth periodic reports of Panama, submitted in a single document (CERD/C/299/Add.1), at its 1208th meeting (CERD/C/SR.1208), held on 18 March 1997, and at its 1213th meeting, on 21 March 1997, adopted the following concluding observations.

A. Introduction

329. The Committee notes with appreciation the State party's willingness to re-establish a dialogue with the Committee by sending a high-level delegation to present the report, which indicates the importance attached by the Government of Panama to its obligations under the Convention. The Committee regrets, however, that no report was submitted between 1986 and 1996 and that the report submitted does not cover adequately all the rights recognized under articles 2 to 7 of the Convention. The Committee nevertheless expresses its appreciation for the frank dialogue with a competent delegation and for the answers given orally to the wide range of questions asked by Committee members.

B. Factors and difficulties impeding the implementation of the Convention

330. The Committee is aware that Panama is emerging from a period of serious political, social and economic difficulties. The Committee notes that substantial disparities in wealth between different ethnic groups of the population tend to affect the implementation of the Convention in the State party.

C. Positive aspects

331. The recent initiatives taken by the State party to promote and protect human rights, including those enumerated by the Convention, are welcomed. The work undertaken by the National Commission on Administrative Boundaries, which resulted in important negotiations and law reforms, such as the enactment of the laws establishing the indigenous comarcas (territorial districts of the indigenous peoples) of Madugandi and Ngobe Bugle, is encouraging. The programmes and initiatives undertaken to protect immigrants and refugees during the period under review are also noted with interest.

332. The adoption in December 1996 of a law establishing an ombudsman for human rights (Defensor del Pueblo) is welcomed.

333. The recent adoption and implementation of two training programmes on human rights for law enforcement personnel are welcomed. It is also noted that the Police Academy has for several years included human rights in its curricula.

334. It is further noted that in 1995 the State party reformed its employment legislation to, inter alia, combat different forms of racial discrimination.

D. Principal subjects of concern

335. It is noted with concern that no complaints have been filed with the appropriate governmental bodies by individuals or groups during the last 10 years, despite reports that rights covered by the Convention were not fully respected.

336. Concern is expressed that some groups living in Panama, such as indigenous people and members of the black and Asian minorities, do not fully benefit from the rights recognized under the Convention.

337. Concern is also expressed that Panama has not fully complied with the obligations derived from article 4 of the Convention.

338. In the light of article 5 of the Convention, it is noted with concern that the issue of land rights of indigenous people has remained unsolved in a great majority of cases. Those land rights seem also to be threatened by the mining activities that have been undertaken, with the approval of the central authorities, by foreign companies, and also by the development of tourism in those regions.

339. It is noted with concern that the legal status of the comarcas in relation to the provinces remains unclear.

340. It is also noted with concern that the State party has presented information, under article 5 of the Convention, only on the right to work. It is reminded that article 5 also covers several other rights. Furthermore, no information on the implementation of article 6 of the Convention has been provided by the State party in its report.

341. While it is noted that the Canal Zone has a special legal status, it is viewed with concern that workers from Panama are not accorded the same rights as foreign workers employed in that special zone.

342. It is noted with regret that indigenous people have a low rate of participation in elections and are under-represented in the public service.

343. The lack of detailed and disaggregated statistical information on indigenous groups remains a concern, especially as it hampers the Committee's ability to monitor the implementation of the rights enumerated in the Convention.

E. Suggestions and recommendations

344. The Committee recommends that the State party designate an appropriate body to coordinate and monitor programmes and policies designed to implement the Convention, as envisaged in its General Recommendation XVII.

345. The Committee recommends that the State party take the necessary measures to comply fully with the obligations of article 4 of the Convention.

346. The Committee suggests that the State party include in its next report information on complaints received and judgments issued in cases of racial discrimination.

347. The Committee suggests that the State party take all appropriate measures to disseminate the Convention widely and to translate it into appropriate languages for indigenous groups.

348. The Committee recommends that the State party continue the improvement of training of law enforcement officials in light of the Committee's General Recommendation XIII.

349. The Committee recommends that the State party take appropriate measures to allow full enjoyment by different groups of society, such as indigenous people or members of the black and Asian minorities, of the rights enumerated in the Convention. Special attention is drawn to the implementation of the rights enumerated in article 5 (e) (iii), (iv) and (v) for those specific groups.

350. The Committee strongly recommends that the State party actively pursue its current efforts to implement fully the right of indigenous people to own property and land. It especially recommends that the State party investigate and monitor the impact of the work of mining companies, including foreign companies, as well as the impact of the current development of tourism, on the enjoyment of basic rights by indigenous peoples.

351. In relation to the legal status of the comarcas, the Committee suggests that the State party explain more precisely in its next report the status of the comarcas in comparison to the status of the provinces.

352. The Committee suggests that the State party take appropriate measures to enable indigenous persons to participate in elections and to provide them with equal access to employment in the public service.

353. The Committee also recommends that the State party include in its next report disaggregated data, including information and socio-economic indicators, on the demographic composition of its population.

354. With regard to the special status of the Canal Zone, the Committee recommends that the Government of Panama take appropriate measures to ensure that the rights enumerated in the Convention, especially article 5, are enjoyed equally by all residents and workers in that specific area.

355. Furthermore, the Committee encourages the State party to consider ratifying ILO Convention No. 169.

356. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted at the Fourteenth Meeting of States Parties to the Convention in January 1992.

357. The Committee recommends that the State party's next periodic report be a comprehensive report and that it address all the points raised in the consideration of the present report.

