

## TONGA

### CERD 28<sup>TH</sup> NO. 18 (A/9018) (1973)

286. The initial report of Tonga, submitted on 15 November 1972, was considered by the Committee at its eighth session (156<sup>th</sup> meeting).

287. The Government of Tonga had not replied to the cable sent to it by the Secretary-General on 6 August 1973 - following the Committee's decision on the programme adopted for consideration of reports submitted by States parties - and the Committee had no information on whether the Government of Tonga intended to send a representative to attend the meeting. As Tonga was not a member of the United Nations and had no permanent mission in New York, and as it had not been possible to contact a representative of that State in Washington, the efforts of the Secretariat to obtain the required information had yielded no results. Some members proposed that the Committee should proceed with the consideration of the report in the absence of a representative of the reporting State, particularly since members had agreed at the fifth session when rule 64 A of the provisional rules of procedure was adopted, that the absence of a representative of a reporting State would not hinder the Committee's discussion of that State's report. <sup>18/</sup> On the other hand, one member proposed that the Committee should postpone its consideration of the report of Tonga until the ninth session; and this proposal was withdrawn in favour of another member's proposal that a second communication should be sent to the Government of Tonga - stating that the Committee was uncertain whether the Secretary-General's earlier cable had been received in time, and requesting the Government of Tonga to compare its report with the guidelines laid down by the Committee at its first session. <sup>19/</sup> This proposal was rejected by a vote of 5 against and 4 in favour, with 4 abstentions; and the proposal to proceed with the consideration of the report at the current session was adopted by 9 votes in favour and 1 against, with 3 abstentions.

288. It was observed that the brief report under consideration contained two statements. The first statement - asserting that there were no legislative, judicial, administrative or other measures in force in Tonga which were contrary to the provisions of the Convention - appeared to satisfy the requirements of article 2, paragraph 1 (c), of the Convention. The second statement - asserting that the Government of Tonga had not found it necessary to introduce any special legislative, judicial, administrative or other measures to combat racial discrimination within the country - would have been satisfactory had it been supplemented by a description of the existing legislation showing that the requirements of some articles in the Convention which called for specific penal legislation (such as article 4 for example) had been satisfied. The absence of such information rendered the report incomplete albeit not unsatisfactory.

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<sup>18/</sup> Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18 (A/8718), para. 23.

<sup>19/</sup> Ibid. Twenty-fifth Session, Supplement No. 27 (A/8027), annex III A.

289. The Committee decided to consider the report incomplete, to request the reporting State to furnish it with additional information in conformity with the guidelines laid down by the Committee and with its General Recommendations, and to entrust to the Rapporteur the drafting of the special communication conveying that request to the Government of Tonga.

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

81. The second periodic report of Tonga, which incorporated, in accordance with the suggestion made by the Committee at its twelfth session, the additional report requested at the Committee's ninth session, was considered without the participation of a representative of the Government of the reporting State. The Committee noted with appreciation that the report was organized in accordance with the guidelines laid down by the Committee at its first session. It took note of the statements that the laws and government policies of the reporting State were being reviewed "to see whether there are any areas where amendments and changes are necessary to comply with the undertaking under articles 2 (1) (c), 2 (1) (d) and 3 of the Convention bearing in mind that racial discrimination does not exist in Tonga" and "there has been no case brought in the courts of Tonga on the grounds of racial discrimination". It was noted with appreciation that the information envisaged in the Committee's general recommendation III was provided with respect to Southern Rhodesia; but it was regretted that no information was given with respect to South Africa. It was also regretted that no information was supplied regarding administrative or other measures giving effect to the provisions of the Convention and that the texts of constitutional or legislative provisions mentioned in the report were not furnished in all cases. While noting that the report contained information on the population groups, classified as "Tongans", "Europeans", "Part Europeans" and "others", it was observed that the figure given for the group described as "Tongans" - which comprised more than 98 per cent of the population - was not broken down into subgroups on the basis of "race, colour, descent or national or ethnic origin", as envisaged in general recommendation IV, although the report acknowledged the existence of different "racial groups" in the country.

82. Much of the discussion revolved around the scope and effect of the reservations and statements of interpretation made by Tonga at the time of accession to the Convention, to which the report referred on several occasions, particularly as they affected the implementation of articles 4 and 5 of the Convention. With regard to article 4 of the Convention, it was observed that the declaration made by Tonga at the time of accession was worded in such a manner as to warrant the conclusion that it was a statement of interpretation and not a reservation, and that it was classified by the Secretary-General as a statement of interpretation. It was emphasized that the Committee was unanimously of the opinion that the provisions of article 4 of the Convention were mandatory and that, contrary to the views of the Government of Tonga, every State party whose legislation did not already satisfy the requirements of paragraphs (a) and (b) of that article was under obligation to enact legislation expressly giving effect to the provisions of those paragraphs. The meaning and scope of the reservation made by the Government of Tonga relating to article 5 of the Convention needed to be clarified, since the report did not state how that reservation would affect the exercise of the rights to which it referred.

83. In the course of the consideration of other aspects of the report of Tonga, members of the Committee raised the following questions: (a) what specific provisions of the Act of Constitution of Tonga did the Government of the reporting State have in mind when it stated that such provisions guaranteed the "protection of racial groups of Tonga in social, economic, cultural and other fields"? (b) To what "other statutes" did the report refer when it asserted that "certain other statutes" implemented the undertaking in article 5 of the Convention? (c) Inasmuch as the report stated that there were in Tonga certain population groups other than "Tongans" and "Europeans", were such groups implicitly subject to possible discrimination as a result of the provisions of article 4 of the

Act of Constitution, which states that “there shall be but one law in Tonga . . . for “Europeans” and “Tongans”?

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

273. The Committee took note of the statement, in the third periodic report of Tonga, that “Tonga regrets that it is not possible for a representative to attend before the Committee”.

274. The Committee noted with appreciation that the report under consideration contained comments on the views expressed during the consideration of the second periodic report of Tonga at the thirteenth session (A/31/18 and Corr.1, paras. 81-83) as well as information on the present population of the country and on the relevant amendments to the Constitution by Act 3 of 1976.

275. The Committee took note of the following statement in the report: “Tonga’s reservations relating to article 5 (c) so far as it relates to elections and the reservations made to articles 2, 3 and 5 (e) (v) so far as they relate to education and training have been withdrawn”. Members of the Committee welcomed that information.

276. The statement in the report that a Committee which is considering law reform generally in Tonga would be invited to give consideration to a proposal to amend the Criminal Offences Act by inserting a provision “naming racial prejudice as a criminal offence” was noted: and members of the Committee stated that they would welcome information on that subject.

277. It was noted that information on the implementation of article 7 of the Convention was not supplied in the report; and it was suggested that general recommendation V of the Committee be brought once again to the notice of the reporting State.

**CERD A/37/18 (1982)**

76. The fourth and fifth periodic reports of Tonga (CERD/C/75/Add.3) were considered by the Committee, without the participation of a representative of the reporting State.

77. Members of the Committee stated that the Government of Tonga had shown considerable goodwill in complying with some of the Committee's requests made in connection with the consideration of earlier reports of Tonga, withdrawing some of its original reservations, and describing the economic and social situation of the country. In their view, the report had to be considered in the light of the island's unique geographical situation and of other conditions and customs which set it apart from other parts of the world. They regretted, however, that the report had not been drafted in accordance with the revised guidelines of the Committee and that there was a lack of information in respect to questions concerning the ethnic composition of Tonga and how the provisions of the Convention had been respected in relation to the various ethnic groups, as well as on the implementation of article 7 of the Convention.

78. The Committee noted that no specific legislation had been enacted in Tonga for the implementation of article 4 of the Convention, in spite of the suggestions that it had made at the time of its consideration of the third periodic report of that country. Some members expressed the opinion that articles 46 and 47 of the Criminal Offences Act of Tonga should be expanded to satisfy the requirements of article of the Convention and that the Government of Tonga should reconsider the declarations it had made with respect to the interpretation of the implementation of that article. The Committee again expressed the hope that the Government of Tonga would enact binding legislation to ensure the full implementation of article 4 of the Convention.

79. With regard to article 5 of the Convention, reference was made to the provision in article 2 of the Constitution of Tonga that any slave who might escape from a foreign country would be free from the moment he set foot on Tongan soil, and some doubts were expressed about the limitation: "unless he be escaping from justice being guilty of homicide or larceny or any great crime or involved in debt". Doubts were also expressed about the requirement that a visitor could not marry without the consent in writing of the Principal Immigration Officer and it was asked what conditions had to be fulfilled before the Principal Immigration Officer gave his consent. Furthermore, reference was made to the Land Act and some explanation was requested as to which were Crown lands and which were hereditary lands. Information was also requested on the role of the Government of Tonga in ensuring that there was no exploitation of migrant workers in the country and on why no trade unions had been formed nor any application made for registration since the enactment of the Trade Unions Act in 1964. It was finally asked whether the broad freedom given to the house owners with respect to the renting of property might not give rise to some racial discrimination.

**CERD A/39/18 (1984)**

141. The sixth periodic report of Tonga (CERD/C/106/Add.5) was considered by the Committee without the participation of a representative of the reporting State.

142. The Committee regretted that no representative of Tonga was present during the consideration of its report. However, it expressed satisfaction that the sixth periodic report contained replies to the comments made by members during the consideration of the previous report, that the Government of Tonga was continuing its dialogue with the Committee and that it had submitted its report on time. The Committee drew the attention of the State party to its guidelines (CERD/C/70/Rev.1), which should be followed in preparing its next periodic reports.

143. With regard to article 3 of the Convention, additional information was requested on Tonga's relations, if any, with the racist régime of South Africa.

144. The Committee reaffirmed its position that, even if racial discrimination did not exist in a country, the Government had an obligation to enact specific legislation to give effect to the provisions of the Convention. In this connection, members of the Committee commended the Government's intention to introduce a Racial Discrimination Act in Parliament which would make it an offence punishable by law to disseminate any ideas based on racial superiority and expressed the hope that the next periodic report would contain the text of the proposed Act as well as detailed information on measures taken to implement the provisions of article 4 of the Convention.

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

407. The seventh periodic report of Tonga (CERD/C/131/Add.1) was considered by the Committee at its 728<sup>th</sup> meeting, held on 6 August 1985 (CERD/C/SR.728), without the participation of a representative of the reporting State.

408. The Committee welcomed the report, which had been submitted on time, as an indication of Tonga's willingness to maintain a dialogue with the Committee. However, it regretted that the report was extremely brief and stressed that the State party had assumed specific obligations under the Convention including that of submitting reports, in accordance with article 9, paragraph 1, of the Convention. The Committee's general guidelines (CERD/C/70/Rev.1) should be taken into account.

409. The Committee observed that, while it was true that Tonga, as a small country with limited human and economic resources, faced certain difficulties in complying with its reporting obligations, other small countries with similar limitations had submitted satisfactory reports and the Government of Tonga itself, in its previous periodic reports, had made efforts to provide comprehensive information.

410. In that connection, the Committee pointed out that the report under consideration was totally silent on the questions raised by the Committee during the examination of Tonga's sixth periodic report, especially with reference to the Racial Discrimination Act which the Government of Tonga had announced it would enact to implement article 4 of the Convention.

411. The Committee, therefore, expressed the view that the Government of Tonga should be requested to provide in its eighth periodic report full information on measures taken to give effect to the provisions of the Convention. The Government could submit a supplementary report in the interim period before its eighth periodic report, which was due on 17 March 1987. It should also indicate whether it encountered difficulties in the preparation of its reports and whether it required any assistance from the Committee in that regard.



**CERD A/44/18 (1989)**

185. The Committee considered the eighth periodic report of Tonga (CERD/C/158/Add.5) at its 838<sup>th</sup> meeting, held on 11 August 1989 (CERD/C/SR.837); to the Committee's regret, the State party had not sent a representative on that occasion.

186. Members of the Committee welcomed the report, which showed that the Government clearly intended to answer its questions. However, they regretted that the report was so brief and observed that although Tonga was a small State with limited resources, it must none the less meet its obligations under the Convention. In general they would have liked to have figures on the composition of Tonga's population.

187. Members of the Committee wished to know how Tonga was implementing the provisions of article 3 of the Convention and, more particularly, whether it had ratified the main international instruments relating to the elimination of apartheid.

188. With regard to article 4 of the Convention, members of the Committee wondered what steps had been taken to combat racism. They noted that Tonga did not seem to be implementing the provisions of that article and wished to know whether the bill on racial discrimination had been adopted, whether Tonga had a Penal Code and, if not, what legal system was applied.

189. Some members wished to know how the rights referred to in article 5 of the Convention were implemented and expressed particular surprise at the fact that the country had no trade unions. In addition, information was sought on the functioning of the courts, the role of information media, the education system and the system of land tenure, particularly in connection with the bill concerning the Crown lands and hereditary land tenure.

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

548. The ninth and tenth periodic reports of Tonga, submitted in one document (CERD/C/209/Add.5), were considered by the Committee at its 1006th meeting, held on 16 August 1993 without the participation of a representative of the reporting State (CERD/C/SR.1006), a fact regretted by the Committee.

549. Members of the Committee welcomed the report, which contained information on some issues discussed during the consideration of the previous report of Tonga four years previously. At the same time they indicated that the report did not follow the Committee's revised general guidelines for the preparation of reports and contained little information with respect to the measures undertaken by the Government in order to implement the provisions of the Convention, especially those contained in articles 5 to 7.

550. Members, having noted the absence of information of a general character in the report, asked the Government of Tonga to submit as soon as possible the "core document", which should be prepared in accordance with the "Consolidated guidelines for the initial part of the reports of State parties" (document HRI/CORE/1). They also indicated that for the preparation of that document, as well as the next periodic report, the Government might request the assistance of the Centre for Human Rights.

551. With respect to article 4 of the Convention, members of the Committee wished to know what concrete measures had been taken by the Government of Tonga to bring the national legislation into line with the provisions of that article.

552. As far as articles 5 to 7 of the Convention were concerned, members of the Committee requested that more detailed information be provided in the next periodic report with respect to their implementation. In particular, they wished to know whether the national electoral legislation met the requirements of article 5 of the Convention; what the procedure was for obtaining, through the competent national tribunals, just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination; and what the place of the Court of Appeal was in the national judicial system. The members also sought more detailed information with respect to education and teaching as a means of combating prejudice which lead to racial discrimination.

### Concluding observations

553. At its 1009th meeting, held on 18 August 1993, the Committee adopted the following concluding observations.

#### (a) Introduction

554. The Committee welcomed the submission of the ninth and tenth periodic reports by the Government of Tonga. It regretted that the report did not follow the Committee's revised general guidelines for the preparation of reports and that it had had to be considered in the absence of the State party's representative.

(b) Positive aspects

555. The Committee appreciated the statistical data in the report on the ethnic composition of society, which had been requested during the consideration of the previous report of Tonga on 11 August 1989.

556. It noted with appreciation the amendments made since the consideration of the eighth periodic report in 1989 to the Constitution of Tonga, the Inquest Act and the Town Regulations Act. Those amendments brought the national legislation of the State party closer to the requirements of the Convention.

(c) Factors and difficulties impeding the application of the Convention

557. The Committee took note of the administrative difficulties encountered by the State party in the preparation of reports to be submitted to the Committee in accordance with article 9 of the Convention.

(d) Principal subjects of concern

558. The Committee considered that the legislation of Tonga did not fulfil the requirements of article 4 of the Convention. It also noted that the information provided in the report was insufficient for an overall evaluation of the State party's implementation of the other provisions of the Convention. The Committee regretted the absence of information in the report with respect to the general political structure, the general legal framework within which human rights were protected, and the overall economic and social situation of the country.

(e) Suggestions and recommendations

559. The Committee recommended that careful consideration be given by the Government of Tonga to incorporating the provisions of the Convention in national legislation, particularly those of article 4 of the Convention. The Committee also recommended that the next report should contain more detailed information on the implementation of the Convention, especially its articles 5, 6 and 7. For that purpose the Committee recommended that the Government of Tonga should request the assistance of the Centre for Human Rights.

## **CERD A/53/18 (1998)**

465. The Committee considered the eleventh, twelfth and thirteenth periodic reports of Tonga (CERD/C/319/Add.3), at its 1298th meeting, on 18 August 1998. At its 1302nd meeting, on 20 August 1998, it adopted the following concluding observations.

### **A. Introduction**

466. The Committee welcomes the presentation of the State party's report, but regrets that the absence of a delegation in its meeting did not allow it to enter into a dialogue with the State party. The Committee notes that the report does not follow the guidelines for the presentation of reports.

### **B. Positive aspects**

467. The regularity in the presentation of periodic reports is most welcome, considering that Tonga is a small country with limited resources.

468. It is noted with satisfaction that the Constitution contains provisions prohibiting the practice of racial discrimination and ensuring equal rights for all the people in the territory of the State party. The statement in the report to the effect that measures taken to encourage integration and multiracial organizations have been promoted by allowing non-Tongans to participate in schools, business, religion and other aspects of public life is also noted with interest.

469. The Constitution also contains provisions allowing any individual to bring complaints about discrimination on racial grounds before the courts. The statement in the report indicating that there have been no court decisions on any case relating to racial discrimination is also noted.

### **C. Principal subjects of concern**

470. The report does not contain sufficient information that would allow the Committee to assess the level of implementation of the Convention in Tonga.

471. Concern is expressed, in particular, at the lack of legislation intended to enforce the provisions contained in article 4 of the Convention and at the statement contained in the report that Tonga has no express policy on the elimination of racial discrimination.

472. In view of the ethnic characteristics of the population, the structure of power in the country and the configuration of the Legislative Assembly, it is regretted that the State party has not provided detailed information about the implementation of the provisions of article 5 of the Convention vis-à-vis the different ethnic groups.

473. It is a matter of concern that, as the Convention has not been incorporated into the domestic law, it cannot be invoked in the courts.

### **D. Suggestions and recommendations**

474. The Committee recommends that the next report provide updated information about the population, in conformity with paragraph 8 of the Committee's general guidelines. The report should also contain detailed information about the practical implementation of the Convention, especially articles 4 and 5.

475. The Committee recommends that the State party provide a core document as soon as possible.

476. The Committee recommends that subjects intended to promote tolerance among different ethnic groups be incorporated in school curricula.

477. The Committee suggests that, in the preparation of its next periodic report, the Government of Tonga may wish to avail itself of the technical assistance provided under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights.

478. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention.

479. It is noted that the State party has not made the declaration provided for in article 14 of the Convention and some members of the Committee requested that the possibility of such a declaration be considered.

480. The Committee recommends that the State party's next periodic report, due on 17 March 1999, address all the points raised in the present observations. It also expresses the hope that a delegation be present when the Committee considers the report.

## **CERD A/55/18 (2000)**

175. The Committee considered the fourteenth periodic report of Tonga (CERD/C/362/Add.3) at its 1384th meeting (CERD/C/SR.1384), held on 14 March 2000. At its 1395th meeting (CERD/C/SR.1395), held on 22 March 2000, it adopted the following concluding observations.

### **1. Introduction**

176. The Committee welcomes the report submitted by the State party and expresses satisfaction over the regularity with which it fulfils its reporting obligations under the Convention. Although regretting the absence of a delegation at the meeting, the Committee recognizes the difficulties inherent in the appointment of such a delegation for a small State like Tonga.

177. The Committee is particularly pleased by the special effort made by the State party to respond to questions contained in its previous concluding observations (CERD/C/304/Add.63).

### **2. Positive aspects**

178. The Committee notes with appreciation the State party's information, in response to previous requests from the Committee, on the constitutional protection of the enjoyment of rights enumerated in article 5 of the Convention.

### **3. Concerns and recommendations**

179. The Committee notes that the State party repeatedly asserted that there is no racial discrimination as defined in article 1 of the Convention. The Committee underlines, however, that the obligation of States parties to enact explicit legislation in accordance with article 4 of the Convention should not be seen merely as a means to ensure protection against existing violations of the Convention, but as a preventive measure. The Committee is of the opinion that the absence of complaints and legal action by victims of racial discrimination could possibly be an indication of a lack of awareness of available legal remedies, or a result of the absence of relevant specific legislation. The Committee recommends that the State party take steps to ensure that national legislation is in full conformity with article 4 of the Convention.

180. The Committee notes that the Convention has not been incorporated in domestic law and cannot be invoked before the national courts. It notes, however, that the State party asserts that the Convention is implicitly applied.

181. The Committee recommends, with reference to its revised general guidelines regarding the form and contents of reports (CERD/C/70/Rev.4), that the State party include in its next report information on factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free from racial discrimination, of rights under the Convention, in order for the Committee to be able to assess whether any racial discrimination has an impact on women different from that which it has on men.

182. Particular concern is expressed at section 10 (2) (c) of the Immigration Act of the Laws of Tonga, according to which the right to marriage between a Tongan and a non-Tongan is conditioned by the written consent of the Principal Immigration Officer. The Committee considers that such legislation might constitute a breach of article 5, paragraph (d) of the Convention.

183. The State party is invited to provide further information in its next report on measures taken in the field of education and culture to combat and prevent racial discrimination.

184. The Committee recommends that the State party prepare a core document in accordance with the consolidated guidelines for the initial part of the reports of States Parties (A/45/636, para. 65).

185. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention.

186. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee request that the possibility of making such a declaration be considered.

187. The Committee recommends that the State party's next periodic report, due on 17 March 2001, be a comprehensive report and that it address all the points raised in the present observations.