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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-sixth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1693rd MEETING

Held at the Palais Wilson, Geneva,
on Monday, 7 March 2005, at 4.45 p.m.

Chairman: Mr. YUTZIS

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* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.1693.

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The public part of the meeting was called to order at 4.45 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

Preliminary draft general recommendation on the prevention of racial discrimination in the administration and functioning of the system of justice (CERD/C/66/Misc.14)

1. Mr. de GOUTTES, introducing the preliminary draft general recommendation on the prevention of racial discrimination in the administration and functioning of the system of justice (CERD/C/66/Misc.14), said that the first part of the document concerned measures of a general nature; it highlighted factual and legislative indicators which could be used to evaluate racial discrimination in the justice system, and then proposed strategies to prevent it. The second part concerned preventative steps that were targeted at the victims of racism, while the third part concerned steps that should be taken with respect to accused persons who were subject to judicial proceedings. He noted that, following suggestions made by Mr. Herndl, the draft general recommendation had been reformulated to ensure that the language used was in keeping with the non-binding nature of a general recommendation.

2. Mr. AMIR questioned whether the statement in the seventh preambular paragraph that "in the vast majority of cases, the system of justice [was] independent and impartial and not suspected of racism or xenophobia" was factually correct. He also questioned the logic in making such a statement when the draft general recommendation went on to show that the opposite was true.

3. Mr. HERNDL thanked Mr. de Gouttes for the work he had put into preparing the draft general recommendation and for incorporating his earlier suggestions. He could support the revised draft.

4. Mr. de GOUTTES said he thought that the nuance implied by the words "even though" in the same paragraph was sufficient to allay Mr. Amir's concerns. He considered it important that the wording of the draft general recommendation should encourage States parties, and not accuse them. Any apparent contradiction stemmed from the fact that racism was not suspected in many justice systems, but existed nonetheless.

5. Ms. DAH suggested that the order of the elements contained within paragraphs 4 and 5 of section A on factual indicators should be inverted: in paragraph 4, "petty street crime" should be listed before the more serious problems of drugs and prostitution, while in paragraph 5, holding areas in airports should be listed first, administrative holding centres second, and penal institutions last.

6. Mr. THORNBERRY said that more consistency was required in the area of terminology. For example, reference was made in an number of instances to "racial or ethnic discrimination". In the Convention, however, the umbrella term "racial discrimination" was used to include the more specific grounds of discrimination, and it was therefore not necessary to mention all forms of discrimination. With regard to the use of the terms "racial or ethnic minorities" or "social

minorities", the Committee should take account of previous general recommendations, such as General Recommendation XXVIII, which referred to "racial or ethnic groups". The term "groups" was broader than "minorities", and more in line with the Convention, including article 14.

7. Referring to paragraph 4 under section A on factual indicators, he said the Committee should be careful in attributing high crime rates to members of minorities, as that could be perceived as a form of stereotyping. As to the question of indigenous peoples, section III-3, paragraph 4, on the right to fair punishment, stated that courts should not apply harsher punishments solely because of an accused person's membership of a specific racial, ethnic or social group. However, ILO Convention No. 169 provided that account should be taken of the economic, social and cultural characteristics of indigenous and tribal peoples when imposing penalties, which was a broader notion. In that connection, because of the enormous damage imprisonment could cause communities, preference should also be given to alternatives to imprisonment where possible. Although reference was made to indigenous peoples in the draft, it was important to emphasize those elements.

8. Mr. PILLAI said that in the last preambular paragraph, which mentioned discrimination suffered by "non-nationals", specific reference should also be made to General Recommendation XXX on non-citizens.

9. He shared Mr. Thornberry's concerns about what might appear to be stereotyping of minority groups by referring to high crime rates. Regarding section I-2, paragraph 1, on eliminating laws which had an "indirect impact" in terms of racial or ethnic discrimination, he wondered if only laws with an indirect impact were referred to. If all laws were included, perhaps the term "indirect" could be deleted.

10. Mr. CALI TZAY wondered whether the reference to high levels of crime among minorities was being made in a European context, as in many other countries that was not the case. With regard to the execution of sentences in section III-4, paragraph 1.1 referred to guaranteeing the special rights of prisoners adapted to their situation, such as consular assistance, respect for their religious and cultural practices and their customs regarding food, and the right to the assistance of an interpreter. It appeared that that recommendation was aimed at migrants or persons who were going to serve a sentence abroad, but it would also be welcome in all countries, as in his experience, there were persons imprisoned for a number of years who did not know why they were being detained, either because they had not been provided with an interpreter or had not been tried. In many countries, customary law existed and could be used in the administration of justice. The draft appeared too advanced to be applied to many countries, where what was sought was a reduction in legal complexity and a minimization of court intervention.

11. Mr. TANG Chengyuan said that, although the Roma had been cited merely as an example, such a reference might be inappropriate. In his view, it would be preferable simply to refer to "indigenous people".

12. Regarding the reference to independent impartial tribunals, he wondered how those terms were to be understood from the point of view of a judge. He understood that a decision must be independent, but the courts could not be completely independent, as there were other bodies in the judicial hierarchy.

13. Mr. KJAERUM agreed with Mr. Pillai that reference should be made to General Recommendation XXX on non-citizens, and the term "non-citizens" should be used consistently rather than "non-nationals".

14. In section I-2, paragraph 7, it was not clear what was meant by "global strategies". If what was meant was the Durban Declaration, perhaps direct reference should be made to it. However, global strategies usually suggested that States develop and implement national plans of action, and so perhaps no mention was necessary.

15. With regard to section II-2, on reporting incidents to the police authorities, reference was made to "severely and promptly" punishing acts of racism. In his view, that language was not appropriate; he favoured wording such as "should be prosecuted". There were too many instances where dealing promptly with a case meant that people did not receive a fair trial.

16. The CHAIRMAN reminded Committee members that they could submit suggestions in writing to Mr. de Gouttes during the intersessional period.

17. Mr. SICILIANOS said that the overall structure of the draft seemed sound. He agreed with Mr. Thornberry on the use of the term "group" as opposed to "minority". Perhaps the structure of other general recommendations should be followed and the paragraphs numbered continuously throughout.

18. Mr. AVTONOMOV said that as the general recommendation was intended to deal with the administration of justice in general, the focus should not be solely on criminal justice, but should also include principles of civil, constitutional and administrative justice. He supported Mr. Cali Tzay and Mr. Thornberry on the question of customary law. Perhaps a paragraph should be introduced on the training of judges on the rights of indigenous peoples, particularly in areas with a large indigenous population.

19. Mr. AMIR said that in many of the Committee's texts the Roma were cited as an example; but perhaps it was not a good idea to single them out, as that might undermine the problems of other groups.

20. Mr. CALI TZAY, referring to section II-2, said that for the general recommendation to apply to all countries, the reference should not be to the "police authorities" but rather to the "competent authorities", as in certain countries incidents were reported to the Public Prosecutor's Office.

21. Mr. de GOUTTES said that he had noted the various suggestions concerning terminology and consistency. Responding to Mr. Avtonomov, he said there were certain references to civil justice, such as the reversal of the burden of proof, but, as one of the most sensitive branches was the criminal justice system, there was inevitably more focus on that area. He would welcome the

revised numbering proposed by Mr. Sicilianos, as he had simply followed the French system. He had noted the comments by Mr. Cali Tzay and Mr. Tang Chengyuan on indigenous peoples, and agreed that certain provisions would need to be emphasized. It should be noted that he had drafted the text in French, and some problems might have arisen in the English translation.

22. The CHAIRMAN suggested that the Committee should consider following the same drafting procedure in future, as it meant that they were not under such time pressure as when they attempted to draft a general recommendation during a single session. It also gave civil society organizations time to submit their views.

23. Mr. SICILIANOS said that at an Inter-Committee Meeting, a suggestion had been made that draft general comments or recommendations be sent to the various committees for comment, in order to promote harmonization of the work of the various treaty bodies. He did not know to what extent that would delay adoption, but once the necessary changes had been made, perhaps members could have one month to submit their proposals before the draft was circulated to the other committees, with due emphasis on the fact that it was not a final version.

24. The CHAIRMAN said that he fully supported the idea, but the committees should also be given a time limit for commenting so as not to delay the preparation of the final text.

25. Mr. de GOUTTES said that he was concerned about the complexity and duration of the proposed process. As the general recommendation dealt with racial discrimination in the administration of justice, it was specific to the work of the Committee. Given that the issue of the administration of justice was of concern to all the treaty bodies, he was afraid that many of the proposals received might relate to justice, but not necessarily racial discrimination. Although he was open to the idea of such an innovation and endorsed the signal it would send concerning the harmonization of the work of the various treaty bodies, he felt that it might affect the specific nature of the Committee's work.

26. The CHAIRMAN said that the idea would simply be to receive ideas from other committees, not to create a substantial degree of dependence.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Sixth and seventh periodic reports of Bahrain (continued) (CERD/C/443/Add.1)

27. The CHAIRMAN drew the attention of the Committee to a letter which had been received from the Bahrain Centre for Human Rights in which it strongly denied accusations made by the Minister of Labour of Bahrain at a previous meeting of the Committee alleging that members of that non-governmental organization had made death threats against the Prime Minister of Bahrain.

The meeting rose at 6.05 p.m.