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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 926th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Reconsideration of reports of States parties that are overdue (continued)

Fifth periodic report of Fiji (CERD/C/89/Add.3) (concluded)

1. Mrs. SADIQ ALI said that it was her understanding that the Indian dominated National Federation party in alliance with Timoci Bavandra's Fiji National Party was the first multiracial political alliance in that country to come to power, and that that was the reason for the coup d'état. The current Constitution of Fiji had been adopted by decree and not by referendum.

2. As Mr. de Gouttes had noted at an earlier meeting, the encouragement afforded by the Government of Fiji to a racist organization, the militant Tankei (landowners') movement which was well represented in the Rabuka Cabinet, which had practised discrimination against the Indian population was in contravention of article 4 of the Convention. However, Indians were not the only population group to suffer from discrimination; the urban Fijians and some of the provinces were also underrepresented in Parliament.

3. Under article 2 (e) of the Convention, States parties have undertaken to encourage multiracial organizations as a means of eliminating barriers between races, and article 7 enjoined States to take measures to combat prejudices which led to racial discrimination. She would welcome further information on the efforts being made by the Government of Fiji in that regard. She was particularly concerned by what appeared to be attempts by the Government to institutionalize racism and ethnicity through the separation of races.

4. Mr. WOLFRUM, Country Rapporteur, said that the Committee's general conclusion was the outcome of consultation between a number of its members, and that it would read: "The Committee notes with regret that Fiji has not reported to the Committee and was not able to send a representative to the meeting of the Committee. Having discussed the new constitutional developments which have taken place in Fiji, the reservations it has made on ratification, and taking note of the express concern of members of the Committee about possible discrimination against Indians in respect of the exercise of political and economic rights, the Committee calls upon the Government of Fiji to resume its dialogue with the Committee by filing the reports which are due. In reporting, the Government should take account of the questions asked and the concerns raised at the meeting at which the Committee discussed Fiji."

5. The CHAIRMAN said that the Committee had concluded its consideration of the situation in Fiji.

Fourth periodic report of the Bahamas (CERD/C/88/Add.2)

6. Mrs. SADIQ ALI, Country Rapporteur, said that the fourth periodic report of the Bahamas, which had been combined in a single document with the third report, had been considered by the Committee in New York in 1983. It had not conformed to the guidelines for reporting, concentrating instead on the observations made by the Committee during the consideration of the second periodic report. The Committee had found the document somewhat unbalanced, in that it dealt mostly with the application of article 5 of the Convention, while not all the information supplied was directly relevant to the question of racial discrimination.

7. In connection with article 26 of the Constitution, the Committee had taken the view that the Government should consider the possibility of bringing the definition of the expression "discriminatory" into line with that of the Convention. In reply it had been stated that, in the opinion of the Government of the Bahamas, the term "discriminatory" as defined in the Constitution was in practice sufficiently comprehensive to cover the definition of racial discrimination as contained in the Convention. A constitutional amendment would require a three-fourths majority in both Houses of Parliament, which might not be easy to achieve. The Committee, however, considered that the definition should be amended.

8. No information had been provided on specific measures for securing the adequate advancement of certain backward racial or ethnic groups. Such information was necessary in view of the great diversity of the racial

composition of the Bahamas.

9. The Constitution of the Bahamas established the fundamental rights of the individual, irrespective of race, ethnic origin, political opinion, colour, creed, sex and religion, but no specific legislation had been enacted to make the provisions of the Convention directly enforceable in the courts. In its fourth periodic report, the Government had reiterated that it had not found it necessary to enact legislative or administrative measures other than those available by virtue of the Constitution itself. The Government should therefore be asked for more information with regard to article 2 of the Convention and for a precise analysis of the existing legislative, judicial and administrative provisions for implementing that article.

10. While members had expressed satisfaction in connection with the implementation of article 3 of the Convention, they had noted that there were no existing penal laws implementing the obligations set out in article 4. In connection with its reservation to article 4, the Government had stated that it interpreted that article as imposing the obligation to adopt additional legislation only if it considered such legislation necessary, that the Constitution prescribed the judicial procedure to be followed in the event of violation of the fundamental rights of the individual, and that acceptance of the Convention did not entail obligations which went beyond the limits of the Constitution or acceptance of any obligation to introduce judicial procedures beyond those which it prescribed. Members of the Committee had agreed that the reservation did not constitute an impediment to the Government's fulfilment of its obligations under the Convention.

11. The Committee had also requested information in the next periodic report regarding the anticipated adoption of legislative measures to implement the International Convention on the Suppression and Punishment of the Crime of Apartheid, a question which would also be relevant to article 4 of the Convention on the Elimination of All Forms of Racial Discrimination and which might be raised again with the Government.

12. The information provided in respect of article 5 had been found satisfactory by the Committee.

13. In its report the Goverment had informed the Committee that there was no need for legislation providing reparation for damage suffered by victims of racial discrimination, since individuals had the constitutional right to appeal to the Supreme Court of the Bahamas for redress. It would be useful to know whether legislation provided for remedies other than those to be found in the Constitution, and whether any relevant cases had arisen.

14. The Government's attention should be drawn to the additional guidelines, adopted on 17 March 1982, for the implementation of article 7 of the Convention.

15. It may be that the Government was unable to spare the financial resources to send a representative to attend the Committee's session in Geneva, it could have submitted a report.

16. In conclusion, she said that the Government's attention should be drawn to the model anti-discrimination legislation being prepared by the Centre for Human Rights. If it needed technical and advisory assistance in preparing its reports, it should approach the Centre for Human Rights.

17. Mr. SHERIFIS said that he agreed with the conclusions reached by Mrs. Sadiq Ali, although it should be pointed out that the Bahamas had a very good human rights record. It was thus regrettable that the Government had not submitted a report for some time.

18. The CHAIRMAN said that a general conclusion would be drawn up on the basis of consultations that took place.

The meeting was suspended at 3.45 p.m. and resumed at 4.20 p.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 6)

Draft model national legislation (CERD/C/1991/Misc.4)

19. Mr. BERNARD (Legislation and Prevention of Discrimination Branch, Centre for Human Rights), speaking as a member of the drafting group that had produced the model national legislation for the guidance of Governments in the enactment of further legislation against racial discrimination (CERD/C/1991/Misc.4), described the methods used in preparing the text. The drafting group had been composed of five legal experts from different parts of the world, each of whom had special experience in areas relevant to the model legislation, such as discrimination directed against indigenous populations, minorities or immigrant workers. Each of the five had examined a specific subject, such as discrimination in housing, education or in connection with freedom of opinion and expression. It was the first time that the Centre for Human Rights had drafted such legislation.

20. In producing the text, the drafting group had primarily drawn on the International Convention on the Elimination of All Forms of Racial Discrimination but had also considered the national legislation of 44 different countries.

21. The CHAIRMAN noted that in many cases, national legislation fell short of the provisions of the Convention, and the Convention should therefore be taken as the basis for any model legislation, supplemented by provisions from national legislation that might be regarded as useful.

22. Mr. LAMPTEY said that the draft model legislation was a creditable effort and would be helpful to the States parties to the Convention. It was an appropriate time for the Committee to be considering the matter, because in many parts of the world, and in particular in Africa, new constitutions were being framed and legislation was being revised, and such a text would be useful in that context.

23. In his view, the structure of the text should be slightly modified. Some sections of the draft contained legislative provisions, whereas others were actually guidelines or suggested measures, and it was necessary to separate the two. For example, the existing part II (General principles), part III, A., paragraph 6 (Sanctions and compensation), part III, B. (Recourse procedures), paragraph 3, and part III, C. (Independent national authority against racial discrimination) should all be included under the heading of general principles and the suggested measures that a model legislation might contain. The rest of the text would then consist of legislative provisions.

24. Regarding part III, A., paragraph 1 (Offences of opinion and expression), he suggested that the introductory sentence should be amended to read "In the context of this Act, and in conformity with international law, freedom of opinion and expression and freedom of peaceful assembly and association shall be subject only to the following restrictions:". That would make it clear that the restrictions concerned racial discrimination only.

25. Mr. WOLFRUM said he shared the Chairman's concern that the starting-point for the model legislation should be the Convention. National legislation was often imperfect and its use would not be conducive to producing a harmonious set of rules that was universally acceptable.

26. The model legislation sought to enforce the prohibition of racial discrimination primarily through the penal code. That was an inappropriate approach and was bound to fail. The provisions in the Convention on training and education, which made the Convention more effective, were missing from the model legislation. He cited the example of Germany, where a discussion was under way on whether the goal of environmental protection could best be

achieved through penal law or through incentives, training and education; the same question could be posed with regard to the goal of eliminating racial discrimination. The penal code, while useful, should not be relied upon exclusively.

27. The trend of all human rights instruments had been to promote greater freedoms, and for that reason he had reservations about part III, A., 1., a.(3). If such a provision were to be implemented, it would mean that a television broadcast of Shakespeare's "Merchant of Venice", which contained obvious elements of racial discrimination, would be an offence. He could cite similar examples. It was important to strike a balance between freedom of expression and the limitations that might have to be placed on that freedom. The freedoms enshrined in the Convention constituted the yardstick against which the model legislation should be measured.

28. Mr. de GOUTTES, endorsing the comments made by Mr. Lamptey and Mr. Wolfrum, said that more time was needed to examine the document, the French version of which he had received only recently. Subject to further comments when the Committee returned to the discussion, as he hoped it would, he considered that an explicit reference to the Convention, or to the precise wording of articles 1 and 5, was needed in part I, under the heading "Definitions".

29. Part III, A., "Offences and sanctions", prompted several comments. The heading of paragraph 1, "Offences of opinion and expression" might, at least in French, give rise to misinterpretation and should be replaced by wording such as "Opinion and expression constituting offences of racial discrimination". A close examination should also be made of the important question of the compatibility of some of the proposed provisions with the general principles of criminal law and criminal procedure, particularly the relevant provisions in the International Covenant on Civil and Political Rights. He was referring, in particular, to Part III, A., paragraph 1., subparagraphs a.(1), a.(2) and a.(4), where it was necessary to ensure conformity with such principles as that of personality as applied to offences and sanctions, and the principles of presumption of innocence, of the restrictive interpretation of criminal law, and of what was usually thought of as the sovereign opinion of the criminal judge in determining who was responsible when an offence was committed.

30. A similar comment could be made regarding the scope of competence of the Independent National Commission against Racial Discrimination referred to in part III, section C., namely, ensuring compatibility between certain powers entrusted to the Commission and the "natural" powers of existing criminal courts, and specifically its competence to receive complaints, to conduct inquiries and to bring legal action.

31. Mr. ABOUL-NASR said that the document under consideration required further study and comparison with other documents, since it reflected only a Western or Judaeo-Christian approach to human rights, completely neglecting other cultures and civilizations and making no effort to understand or take into account the conditions and problems prevailing in the countries that most needed assistance, namely, those of the third world. That was clear from the bibliography, particularly the monographs, quoted at the end of the document. The group preparing the study should undoubtedly have been more representative of the present-day membership of the United Nations.

32. He also had reservations about the group's somewhat narrow mandate in preparing model national legislation for the enactment of further legislation against racial discrimination only. He asked the representative of the Centre for Human Rights whether a more useful and practical approach would not have been to study the implementation and enactment of legislation on human rights in general, taking into account the needs and experience of the countries who most required it, and consulting experts from those countries.

33. Mr. YUTZIS said that it was useful to have basic background information

for a discussion of the issue, even though there was no Spanish version, and the French version had only recently been made available. He agreed that the Committee needed time to reflect seriously on the text, which not only involved legal aspects, but also had social, ethical and anthropological dimensions. He suggested that a representative, open-ended working group should be set up to study the text and make additional proposals for discussion by the Committee, either at the current session or at the next session if that were not feasible.

34. The CHAIRMAN said that the Committee should complete its discussion of the item at the current session in order to convey its comments to the Centre for Human Rights in time for the model national legislation to be submitted to the General Assembly at its next session. The idea of establishing an open-ended working group was a constructive one and he suggested that Mr. Yutzis should be the convener.

35. With reference to the emphasis placed by Mr. Lamptey and Mr. Wolfrum on the need to ensure that freedom of expression was not unduly curtailed in the proposed text, he said that the wording of article 19 of the International Covenant on Civil and Political Rights should be taken into account as being more explicit than that of article 5 of the Convention; it should also be broadly acceptable to States parties.

36. Mr. RESHETOV, stressing the crucial importance of the document under consideration, asked the representative of the Centre for Human Rights whether it would be possible, in due course, to append an annex reproducing verbatim the relevant provisions of national constitutions and legislation referred to at the end of the document under the heading "Sources article by article". Interested countries might have difficulty in obtaining the original texts, and the document's importance and usefulness would be greatly enhanced if the relevant provisions were quoted in full.

37. He did not agree with Mr. Aboul-Nasr that there were different philosophies on human rights; indeed, the object of United Nations activities in that field was to produce a single code on human rights that would be respected by all. That aim was also pursued in the countries themselves, taking into account specific national characteristics.

38. Although he did not think that the bibliography as a whole represented a purely European approach, he, like Mr. Aboul-Nasr, cautioned against the negative impression left by the sources listed under the heading "Doctrine", which certainly did not reflect the whole of world doctrine on the subject.

39. Mr. VIDAS said he, too, thought that examination of the document should be deferred.

40. In his view the whole section B. of the bibliography, dealing with doctrine, should be deleted. An important question had been raised in the Committee's earlier discussions, namely, the relations between federal Governments on the one hand and national and local authorities on the other. It was essential for Governments to ensure, through legislation, that the Convention was implemented by all national authorities. That emphasis was missing from the document, although it had clearly been in the minds of its authors in including the provisions of part III, C., paragraph 3. The point needed to be amplified to cover the different practices in different States.

41. The CHAIRMAN, speaking in a personal capacity, said that in its revision of the draft, the working group should try to ensure that the model national legislation conformed as closely as possible to the Convention.

The meeting rose at 5.25 p.m.