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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-ninth session

SUMMARY RECORD OF THE 1779th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 August 2006, at 10 a.m.

Chairperson: Mr. de GOUTTES

CONTENTS

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

Review of the implementation of the Convention in States parties whose periodic reports
are seriously overdue

Draft concluding observations concerning the sixth and seventh periodic reports of
Estonia

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The meeting was called to order at 10.10 a.m.

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

Review of the implementation of the Convention in States parties whose periodic reports are seriously overdue

Malawi (CERD/C/MWI/Q/5/Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Malawi took seats at the Committee table.
2. Ms. HIWA (Malawi) introduced her delegation's written responses to the Committee's list of issues (CERD/C/MWI/Q/5/Add.1). Although the Convention had not been incorporated into domestic law, existing legislation reflected its provisions. The Constitution prohibited discrimination and protected the rights of all Malawians. Legislation such as the Employment Act and Labour Relations Act likewise prohibited discrimination, and the Penal Code criminalized discrimination. National institutions that promoted human rights included the judiciary, the Malawi Human Rights Commission and the Office of the Ombudsman.
3. She regretted that a representative of the Malawi Human Rights Commission, due to circumstances beyond the Commission's control, had not been able to accompany the delegation. She recognized that the written responses to the list of issues were not a substitute for a full periodic report. Unfortunately a lack of human and financial resources had prevented the submission of the overdue periodic reports.
4. Mr. AMIR (Country Rapporteur) welcomed the opportunity for a dialogue with the State party. Its written responses to the Committee's list of issues provided a sound basis for the preparation of a full periodic report in accordance with article 9 of the Convention. More information would be welcome on: the justice system, which was a combination of common law and customary law; the role of the Ombudsman; prison conditions; HIV/AIDS rates; the situation of refugees, most of whom were women and children; and the status of women, who for example represented over two-thirds of the agricultural work force. He noted that the Penal Code criminalized discrimination and welcomed the fact that no death sentence had been carried out since 1992.
5. He took note of the delegation's assertion that there was little ethnic antagonism in Malawi but urged the State party to ratify all international human rights instruments with a view to further improving the human rights situation. He proposed that the State party take advantage of the technical assistance available from the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the preparation of periodic reports.
6. Mr. THORNBERRY said the delegation's written responses contained welcome information on many issues that merited more in-depth treatment in the context of a full periodic report, such as the legislative framework of human rights protections, minority and ethnic groups, education, the concept of discrimination, special measures, and remedies for human rights violations.

7. The CHAIRPERSON welcomed the State party's commitment to publish the Committee's concluding observations.
8. Mr. KJAERUM commended the State party for the establishment of an effective national human rights institution, the Malawi Human Rights Commission. He looked forward to discussing with the delegation, in the context of a full periodic report, issues relating to education, complaint mechanisms, refugees and in particular the status of non-citizens. In that context, he referred the delegation to the Committee's general recommendation XXX on non-citizens.
9. Mr. VALENCIA RODRIGUEZ said the information provided in the written responses was an excellent starting point for the drafting of a full periodic report. He urged the State party to take advantage of the technical assistance available from the Office of the High Commissioner with a view to submitting a periodic report in the near future.
10. Mr. CALI TZAY noted that, according to the written responses (para. 12), tradition exerted a powerful influence on community life and he wondered whether in general Malawians were also open to new ideas. He expressed concern that the use of laypersons and paraprofessionals in the court system (paragraph 16 of the responses) could encourage corruption and lead to erroneous interpretations of the law and he therefore requested more information on the justice system. The responses highlighted the cohesiveness of Malawian society (para. 19) but he enquired whether the many tribal and ethnic groups in Malawi were officially recognized in the Constitution and legislation and what their rights were.
11. Ms. HIWA (Malawi) said her Government was fully aware of its reporting obligations. Her delegation had taken note of the Committee's comments. She welcomed the possibility of receiving technical assistance from the Office of the High Commissioner for the drafting of a periodic report and requested the Committee to contact the Office of the High Commissioner in that regard.
12. Mr. AMIR (Country Rapporteur) thanked the delegation and requested the State party to inform the Committee when it might be prepared to receive a technical assistance mission from the Office of the High Commissioner. He also underscored the importance of ensuring that civil society organizations participated fully in the preparation of the report.
13. The members of the delegation of Malawi withdrew.

The meeting was suspended at 10.55 a.m. and resumed at 11 a.m.

Seychelles

14. The CHAIRPERSON recalled that the situation of Seychelles had already been reviewed at the August session of the previous year, but in the absence of any response to its correspondence, the Committee must decide how to proceed on the matter.
15. Mr. PILLAI (Country Rapporteur) recalled that the Chairperson had written to the Seychelles ambassador in New York in August 2005, enclosing a list of questions to which a response had been requested by 31 January 2006, failing which the Committee would proceed with the adoption of concluding observations.

16. After giving a brief outline of Seychelles' historical, political and demographic background, he noted that the preamble of the Constitution stated that the people of Seychelles were "aware and proud that as descendants of different races we have learnt to live together as one nation under God and can serve as an example of a harmonious multi-racial society". Seychelles had ratified the Convention in 1979, and the Committee had considered its last report in 1988 in the absence of a delegation. Reporting obligations should not be overlooked given the importance of tourism to the economy, as the presence of such large numbers of tourists might have a bearing on the operation of the provisions of the Convention.

17. Since its last dialogue with the Committee in 1988, Seychelles had ratified the six other core United Nations human rights treaties. However, Seychelles' initial reports to the other treaty bodies were all overdue, with the exception of the report under the Convention on the Rights of the Child, which had been submitted in September 2002. In that report, the State party had stated that "the richness of the population is reflected in the mixture of the many ethnic groups, which over the years have inter-married and are now living in harmony". On consideration of the fourth periodic report in 1988, the Committee had observed that the information provided had been of a general nature, and had requested more information on the positive aspects of racial integration. At that time, the delegation had stated that enactment of legislation to enforce article 4 of the Convention was being considered, but that no decision had been taken as to its specific form.

18. It was necessary to create conditions for the fulfilment of obligations arising from the Convention, as ratification of international treaties should not be allowed to remain a simple formality. The list of questions sent last August had included reference to the Committee's Concluding Observations adopted in 1997 following the review procedure, which suggested that the State party might wish to avail itself of the technical assistance offered by the Office of the High Commissioner for Human Rights, with the aim of drafting and submitting as soon as possible an updated report in accordance with the reporting guidelines. The Committee had no information as to whether the State party had given any thought to that proposal.

19. He proposed that the Committee should draft preliminary observations and recommendations, treating them as confidential, and send them to Seychelles for comment, stating that if no response was received they would be finalized at the Committee's next session, as had been decided in the case of Saint Lucia.

20. The CHAIRPERSON said he took it that the Committee approved Mr. Pillai's proposed course of action.

21. It was so decided.

22. Mr. LINDGREN ALVES suggested that, in addition to sending the preliminary observations, the Committee should collaborate with United Nations Development Programme (UNDP) representatives in Seychelles, requesting that they enter into contact with the government authorities on the matter. The Committee should adopt a less bureaucratic, more proactive approach to the situation. It was obvious that the country did not have bad intentions, but was simply not aware of the importance of complying with its reporting obligations.

23. Mr. SICILIANOS supported the proposal made by Mr. Pillai and agreed with Mr. Lindgren Alves that the Committee should explore the possibility of greater collaboration with other United Nations bodies.
24. Mr. AMIR also agreed with Mr. Pillai and Mr. Lindgren Alves. He knew the Seychelles was a multiracial society with no fundamental problems which would be of concern to the Committee. He wondered whether the Committee would be given the opportunity to hold a third session in New York to discuss the situation of State parties which had not submitted reports and did not have diplomatic representation in Geneva. He suggested submitting a proposal to that effect to OHCHR. Experience had shown that simply sending letters to Governments had not yielded positive results, and therefore more interactive personal contact between the Committee and States parties with reporting difficulties should be developed.
25. Mr. KJAERUM said that the Committee should engage in close cooperation with OHCHR as part of the general move towards a more integrated United Nations system. He suggested extending an invitation for the High Commissioner to meet with the Committee during its seventieth session in order to discuss options for implementing Mr. Amir's proposal, which he fully supported. Alternatively, the Chairperson could meet with the High Commissioner between sessions.
26. The Committee should also consider drawing on the support of special procedures when dealing with States whose failure to report was not resource related and where evidence suggested that violations of the Convention did occur. It might be useful to arrange a meeting with the Chairperson of the Human Rights Council to discuss possibilities of assistance. Given that the Council was currently engaged in establishing its procedures, the time for discussing modalities for cooperation was particularly opportune.
27. Mr. PILLAI said that the Committee should ascertain whether there was any OHCHR field presence in Seychelles before establishing contact with the UNDP Resident Representative. OHCHR field officers could be valuable partners in facilitating dialogue with the State party Government. Concurrently, he fully supported the idea of establishing a cooperative link with UNDP.
28. Mr. ABOUL-NASR said that holding meetings at United Nations Headquarters would certainly work in favour of developing countries without diplomatic representation in Geneva. Moreover, it would facilitate compliance with article 10, paragraph 4, of the Convention, which provided that meetings of the Committee should normally be held at Headquarters.
29. Mr. TANG Chengyuan endorsed Mr. Kjaerum's proposals. The Committee might also wish to consider establishing contact with regional organizations, which could help facilitate dialogue with non-reporting States.
30. Mr. LINDGREN ALVES, supported by Mr. EWOMSAN, said that cooperation with UNDP resident representatives would certainly enhance the Committee's work. Supporting the course of action suggested by Mr. Pillai, he said that combined action by UNDP and OHCHR might indeed prove most effective.

31. Ms. JANUARY-BARDILL was particularly in favour of the proposal to seek closer cooperation with the Human Rights Council, which echoed a suggestion made by the working group on early warning and urgent action procedures.

32. The CHAIRPERSON, summing up the debate, said that the Committee would send a confidential draft of its concluding observations to the Government of Seychelles. It would also take steps to avail itself of the assistance of OHCHR field offices and UNDP resident representatives when trying to identify and overcome obstacles to reporting, including in the case of Seychelles. The Committee would approach the United Nations High Commissioner for Human Rights in respect of the proposal to hold meetings at United Nations Headquarters. It would further seek to arrange for a meeting with the Chairperson of the Human Rights Council at his earliest convenience in order to discuss cooperation mechanisms that could help address the problem of non-reporting.

The meeting was suspended at 12 noon and resumed at 12.20 p.m.

Draft concluding observations concerning the sixth and seventh periodic reports of Estonia (continued) (CERD/C/EST/CO/7)

Paragraph 8

33. Mr. KJAERUM proposed replacing the words “stateless persons of Russian origin” in the first sentence by “stateless persons of long-term residence”. The third sentence should be reworded to read: “The Committee recommends that the definition of minority under the Law on Cultural Autonomy of National Minorities of 1993 be amended to include non-citizens, especially stateless persons of long-term residence in Estonia.”

34. Paragraph 8, as amended, was adopted.

Paragraph 13

35. Mr. SICILIANOS, supported by Mr. YUTZIS (Country Rapporteur) suggested a number of amendments in the light of informal discussions between members. The reference to the right of non-citizens in Estonia to participate in local elections should be moved to section B of the concluding observations, “Positive aspects”. Paragraph 13 would then begin: “The Committee reiterates its previous concern” The second subparagraph should be amended to read: “The Committee recommends that the State party give due consideration to the possibility for non-citizens to participate in political parties”, rather than the original wording, which had called upon Estonia to amend its Constitution.

36. Mr. THORBERRY (Rapporteur) suggested that, in the new paragraph in section B, the word “acknowledges” should be replaced by “welcomes”.

37. In the second subparagraph of paragraph 13, he suggested that “participate in political parties” should be replaced by “become members of political parties”, since it was not clear how non-citizens could participate in a party’s activities without being members.

38. Mr. ABOUL-NASR said that it was important not to set a precedent. The Committee must not be seen to recommend that non-citizens of a country should be allowed to join that country's political parties. He would not block the consensus, but if it came to a vote on the paragraph, he would vote against it.
39. Mr. SICILIANOS said that he shared Mr. Aboul-Nasr's doubts. His suggestion was intended to be a compromise. Political parties should decide for themselves how non-citizens might be involved in their activities - through a form of affiliation, for example, or by allowing them to speak on matters which concerned them. The original wording emphasized the Committee's wish for non-citizens to be more involved in political life in Estonia because of the unique situation in that country, but it should not be expressed as a general principle.
40. Mr. YUTZIS (Country Rapporteur) supported Mr. Sicilianos' amendment. It was not for the Committee to suggest changes to a country's constitution.
41. Mr. EWOMSAN supported Mr. Sicilianos' proposal. It was important not to set a precedent which might not be appropriate for all countries.
42. Mr. AMIR likewise advocated caution. The Committee's recommendation, even in the modified form proposed by Mr. Sicilianos, might well be taken as a precedent by other States parties. Some countries had difficulty guaranteeing fair elections involving just their own citizens, let alone non-citizens.
43. Mr. THORNBERRY (Rapporteur) said that the situation in Estonia, where a large number of long-term residents found it very difficult to obtain Estonian citizenship, was a unique one and that other States parties would understand that the recommendation was not intended to create a precedent. Nevertheless, in the interests of consensus, he withdrew his proposal.
44. Mr. AVTONOMOV, supported by Mr. SICILIANOS, Mr. TANG Chengyuan, Mr. YUTZIS (Country Rapporteur) and Mr. THORNBERRY (Rapporteur) suggested the addition of the following phrase: "The Committee recommends that the State party, taking into account the large number of long-term residents of Estonia who are non-citizens, give due consideration to"

45. Paragraph 13, as amended, was adopted.

Paragraphs 14 and 15

46. Paragraphs 14 and 15 were adopted.

Paragraph 16

47. Mr. THORNBERRY (Rapporteur) suggested deleting the superfluous word "prevalence", so that the text would read: "... the high rate of HIV/AIDS amongst persons belonging to minorities ...".
48. Paragraph 16, as amended, was adopted.

Paragraphs 17 to 20

49. Paragraphs 17 to 20 were adopted.

Paragraph 21

50. Following a question from Mr. AMIR, Mr. THORNBERRY (Rapporteur) suggested the following wording: "... and reiterates its recommendation that it consider doing so". The phrase at the end of the paragraph, "without further delay", should be deleted.

51. Paragraph 21, as amended, was adopted.

Paragraph 22

52. Paragraph 22 was adopted.

Paragraph 23

53. Mr. SICILIANOS asked whether the paragraph, which encouraged Estonia to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, was appropriate for a country which had relatively few migrant workers. He assumed that it had been included for some specific reason, rather than as a matter of form.

54. Mr. YUTZIS (Country Rapporteur) supported by Mr. THORNBERRY (Rapporteur) said that more migrant workers could be expected to move to Estonia as the economic situation there improved.

55. Paragraph 23 was adopted.

Paragraph 24

56. Paragraph 24 was adopted.

Paragraph 25

57. Paragraph 25 was adopted with minor drafting changes.

Paragraphs 26 and 27

58. Paragraphs 26 and 27 were adopted.

59. The draft concluding observations concerning the sixth and seventh periodic reports of Estonia, as amended, were adopted.

The meeting rose at 1.05 p.m.