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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 924th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

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The meeting was called to order at 3.10 p.m.

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

Initial and second to fifth periodic reports of Togo (CERD/C/75/Add.12)

1. The CHAIRMAN said that the five reports of Togo had been combined in a single document, issued in 1983. As the Committee had agreed earlier, it would discuss the situation in Togo in the absence of a representative of that country or of a more recent report. The Committee had considered the consolidated document at its 640th and 641st meetings in July 1983.

2. Mr. WOLFRUM, Country Rapporteur, pointed out that Togo had so far reported only once, in 1983, but that the document submitted had contained detailed information. He briefly reviewed Togo's ethnic composition, as discussed in that report, and observed that the Togolese Constitution provided for rights and freedoms without distinction as to origin, sex, belief or opinion, as stipulated in article 5 of the Convention, but did not prohibit discrimination on the basis of language or property. Article 18 of the Togolese Constitution provided that if the Republic was in danger and the smooth functioning of institutions was interrupted, the President of the Republic was to take any measures that the situation required. Although such emergency measures had been taken only once, for a few days following the aggression against Togo by mercenaries in 1986, he asked whether there were any provisions defining the circumstances in which the President of the Republic was empowered to proclaim a state of emergency and regulating its duration; whether it was then possible for the rights and freedoms recognized under article 5 of the Convention to be suspended; whether Togo's National Assembly had the right to review such measures; and whether the President could dissolve the National Assembly in such a situation.

3. According to paragraph 65 of the consolidated report, there had been no manifest cases of racial discrimination in Togo, and it was therefore unnecessary to declare punishable by law any acts, practices, organizations or institutions based on racial discrimination, a view that had been repeated by the representative of Togo at the Committee's 641st meeting. Although the Committee had appreciated the detailed information provided by the Government of Togo, disagreement had been voiced at that meeting regarding the approach taken on the implementation of article 4 of the Convention, and Togo had been reminded that States parties were bound to enact legislation prohibiting racial discrimination, regardless of whether such discrimination occurred. The affirmation that racial discrimination did not exist in Togo had also been challenged by Mr. Sherifis, Mrs. Sadiq Ali and Mr. Lamptey.

4. In its initial report to the Human Rights Committee (CCPR/C/36/Add.5), dated 11 November 1988, it was stated that in Togolese law and practice, there was no discrimination based on race, colour, sex, religion or property (para. 63); that the rights recognized in the Covenant were enjoyed by the entire population of the Republic without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origins, property, birth or other status (para. 64); and that the various ethnic, linguistic and religious groups were entitled to enjoy their own culture and to profess and practise their own religion (para. 229).

5. The information in the report to the Committee on the Elimination of Racial Discrimination was therefore clearly out of date, and he drew attention to a number of subsequent developments also mentioned in the report to the Human Rights Committee.

6. On 9 June 1987, the President of Togo had promulgated Act No. 87-89 establishing the National Human Rights Commission, an autonomous institution to protect the civil and individual rights of citizens, recommend legislation on human rights, organize seminars and symposia on the subject and express opinions on human rights issues. The Commission was composed of 13 members elected for a period of four years. Article 11 of Act No. 87-89 provided that any individual who considered that his human or civil rights had been violated as a result of an act or omission of the Government could submit a petition to the Commission. Non-governmental organizations enjoyed the same right. If the Commission decided that a petition received was admissible, it must, within 14 days, appoint a special rapporteur from among its members to conduct an inquiry. The special rapporteur was empowered to investigate any reports, records or other documents and to enter any premises connected with the inquiry. That was quite a far-reaching mandate. If necessary, he cooperated with the government body concerned in an attempt to find ways of remedying the violation referred to in the petition, and he had to complete his investigation and make recommendations to the Commission within 15 days. If the violation continued, the Commission immediately met to consider ways of bringing it to an end. Although cases of violations were to be considered confidential, the Commission could decide otherwise if necessary.

7. The report to the Human Rights Committee contained no information on the implementation of article 4 of the Convention. Nevertheless, the establishment of the National Human Rights Commission was a positive step towards the promotion of human rights. Further information was, however, needed on the status of that Commission in the courts, and it would be useful for the Committee to receive the Commission's annual reports so as to be able to evaluate its activities.

8. In March and April 1991, student unrest had erupted in Togo, and many persons had been injured. A commission had been established to investigate those events and the role played by the armed forces. It would be interesting to know what its findings had been. Reference had also been made to the existence of tribal tensions, and he asked what the Government had done to alleviate them. Information should also be provided on the unsatisfactory situation of those farmers who had recently been resettled by force.

9. In conclusion, he said that Togo should be encouraged to resume the submission of periodic reports in accordance with its obligations under article 9 of the Convention.

10. Mr. BANTON said that the case of Togo might be another example of a situation already encountered elsewhere, in which tensions that appeared to be of political origin actually had an ethnic dimension. There was reason to believe that members of the same ethnic group as the President enjoyed preferential treatment in the army and in certain areas of political life. It would be useful to have more information on that subject in the next periodic report.

11. Mr. de GOUTTES said he was grateful to Mr. Wolfrum for giving details of the new National Human Rights Commission in Togo. It was to be hoped that more information would be forthcoming on what that Commission had actually accomplished. According to his information, the Commission had already denounced the illegal arrest in February 1991 of villagers in northern Togo, who had been forcibly displaced by the armed forces from an area near a national park. It would appear that ethnic discrimination had played some part in those events.

12. Following serious demonstrations in October 1990, the Government of Togo had announced that the Constitution would be amended to allow the establishment of new political parties and, if he was not mistaken, the idea of holding a referendum on the new constitution by the end of the year had been raised. The Government of Togo might indicate what progress had been made on those points.

13. Mr. ABOUL-NASR regretted that Togo had not sent a representative to attend the session.

14. In paragraph 1 of the summary record of the Committee's 641st meeting on 21 July 1983 (CERD/C/SR.641), reference had been made to an Interministerial Commission on Human Rights. The next report of Togo to the Committee might provide information on the work which that Commission had accomplished and on whether it had found gaps in Togolese legislation on racial discrimination.

15. Mr. VIDAS said that the Committee should express its interest in receiving information in Togo's next report on the provisions of that country's new constitution.

16. Mr. YUTZIS said that Mr. Banton had raised an important point. It was necessary to establish whether conflicts were strictly political or whether ethnic, linguistic or racial factors were also involved. The Committee had no information on that subject, and Togo must therefore clarify in its next report whether political tensions had an ethnic, linguistic or tribal component and how the Government was dealing with that issue.

17. Mr. WOLFRUM, summarizing his conclusions, said the Committee should express regret that the Government of Togo had not submitted a recent report and had not been represented at the Committee's session, and it should encourage that Government to resume a dialogue by submitting the reports due. In so doing, the Government should deal with the questions raised by the Committee with regard to the introduction and implementation of legislation prohibiting racial discrimination.

18. Mr. ABOUL-NASR said that, in its conclusions, the Committee should always make it clear whether a country had been represented at the session and, if not, whether satisfactory reasons had been given for its absence.

19. The CHAIRMAN announced that the Committee had concluded its consideration of the situation in Togo.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION

RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 5) (CERD/C/216)

20. Mrs. SADIO ALI recalled that, at its thirty-eighth session, the Committee had approved the appointment of the members of its three working groups to examine the documentation submitted to it under article 15 of the Convention and to report to the Committee on their findings, as well as on their opinions and recommendations. The working group on Atlantic Ocean and Caribbean Territories, including Gibraltar, had consisted of Mr. Wolfrum, Mr. Rechetov, Mr. Vidas and Mr. Foighel, with Mr. Yutzis as convener; the working group on Pacific and Indian Ocean Territories had consisted of Mr. Lechuga Hevia, Mr. Garvalov, Mr. Rhenan Segura and Mr. Song Shuhua, with Mr. Sherifis as convener; and the working group on African Territories had consisted of Mr. Ahmadu, Mr. de Gouttes and Mr. Ferrero Costa, with Mr. Lamptey as convener. During the thirty-ninth and fortieth sessions, the working groups had continued to function as constituted at the thirty-eighth session. The Committee had also agreed that she herself would continue to serve as Chairperson of the conveners of the three working groups. She suggested that the latter should inform the Committee of each group's comments and recommendations.

21. Mr. YUTZIS, convener of the working group on Atlantic Ocean and Caribbean Territories, including Gibraltar, read out the group's comments and conclusions, beginning with a general question on the influence of tourism on the socio-cultural life of the inhabitants. Regarding Anguilla, there were no comments, since no data had been provided. Regarding Bermuda, noting that black people accounted for 61 per cent of the population, the working group requested information about the socio-economic situation with reference to the demographic data. In regard to the British Virgin Islands, note had been taken of the economic growth of the economy of the Islands and the improvement in the education system. It was expected that the persistent difficulties for potentially eligible voters to register to vote would be overcome by making the appropriate amendments to the relevant rules. With regard to the Cayman Islands, the working group had taken note of the sustained economic growth of the Islands, but had no further comment. On the subject of the Falkland Islands (Malvinas), it wished to know why there were no legislative instruments concerning human rights. Regarding Gibraltar, there were no comments. Regarding St. Helena, information was sought on the follow-up action taken pursuant to General Assembly resolution 44/428 of 11 December 1989, which noted with concern the trade and transportation dependency of the Territory on South Africa and urged the administering Power to take all the necessary measures not to involve the Territory in any offensive acts by the racist regime of South Africa. Why were the principles set out in the Universal Declaration of Human Rights not embodied in the Constitution of St. Helena? Regarding Montserrat and its constitutional development, information on the outcome of the reported constitutional problem between the people of Montserrat and the administering Power was sought. With reference to the relevant document on the Turks and Caicos Islands, what was meant by "illegal is vigorously combated", and what objectives were pursued by amending the immigration law? The substantial increase in crime had been noted. Finally, with regard to the United States Virgin Islands, what was the effect of the Huri Ken tourism industry?

22. The CHAIRMAN asked whether the Committee might wish to omit from its report any reference to those territories on which no comment had been made.

23. Mr. ABOUL-NASR said that he was not in favour of omitting any information. Indeed, the Committee's functions under article 15 were very clear. It was supposed to receive from the competent United Nations bodies and from the Secretary-General of the United Nations all relevant information, including copies of petitions and of reports concerning legislative, judicial, administrative or other measures relating to the territories in question, and to give opinions and make recommendations. If the Committee had not received the information, as had sometimes been the case, it was its duty to say so. In recent years, it had been unable to fulfil its mandate under article 15 largely for that reason and must report to the Secretary-General on the problems it faced.

24. Mr. SHERIFIS, convener of the working group on Pacific and Indian Ocean Territories, said that the working group had once again found it impossible to fulfil its functions under article 15, paragraph 2 (a), of the Convention, on account of the total absence of any copies of petitions as provided therein. The working group had studied the material furnished under article 15, paragraph 2 (b), and found that there was no valid information concerning legislative, judicial, administrative or other measures directly related to the principles and objectives of the Convention and was therefore unable to express any opinion or make any recommendation concerning the Pacific and Indian Ocean Territories. The working group therefore reiterated its request that it be furnished with the material expressly referred to in article 15 of the Convention so that it would be able to fulfil its functions.

25. Mr. LAMPTEY, convener of the working group on African Territories, said that the working group had considered documents A/AC.109/999/Rev.1 and A/AC.109/1048 and Corr.1/Rev.1, which were working papers on Western Sahara, prepared by the United Nations Secretariat. The working group had taken note of the continuing efforts of the Secretary-General of the United Nations and the Organization of African Unity to promote a just and definitive solution to the question of Western Sahara and, in that connection, had expressed the hope that the proposed referendum would be carried out soon, thus allowing the people of Western Sahara to exercise their right to self-determination. The working group wished to be informed of any further developments on the question of Western Sahara since the submission of the working papers to the General Assembly.

26. Commenting on the question of the inadequacy of the material supplied to the Committee, he said that the situation was not new and required no further discussion. The Committee's conclusions on that point could be summarized for insertion in the appropriate place in the Committee's report to the General Assembly, along with the compilation of the working groups' findings.

27. The CHAIRMAN requested Mrs. Sadiq Ali to consult with the conveners and to submit to the Committee a consolidated report of the conclusions of the working groups for inclusion in the Committee's report to the General Assembly. She might also consider the questions raised by Mr. Aboul-Nasr as to the procedure to be followed and any outstanding questions concerning petitions and reports under article 15.

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

Question of the Committee's sources of information

28. The CHAIRMAN drew the Committee's attention to a note by the Secretariat on the question of the Committee's sources of information summarizing current practice in United Nations human rights bodies. The note, which had been prepared as a basis for the Committee's discussion, had been circulated to Committee members.

The meeting was suspended at 4.05 p.m. and resumed at 4.30 p.m.

29. Mr. WOLFRUM said that the issue - an important one - had been discussed when he had first joined the Committee. Since then, he had assumed that the Committee could use any information available to it, since the Convention did not specify what sources it should use. The excellent note provided by the Secretariat was completely convincing. The Committee's mandate was to monitor the Convention, so that it was free to use all sources of information. He pointed out, however, that, as experts, the members of the Committee had to exercise responsibility with regard to the reliability of sources.

30. Mr. FERRERO COSTA agreed. Members might use any source of information, but on their own responsibility. Much had happened since the legal opinion of 1972, referred to in paragraph 5 of the note by the Secretariat. At that time human rights had been considered less important. Quoting from paragraph 6 of the note, detailing the practices of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee Against Torture, he pointed out that all those bodies used various sources of information in accordance with their statutes. There was no legal or practical reason to limit the information used by the Committee to that received from States parties, which were obviously biased to some extent. That view was supported by the quotation from the report of the third meeting of persons chairing human rights treaty bodies that was reproduced in paragraph 7 of the note by the Secretariat. The Committee should take a clear decision to accept information from any source, including non-governmental organizations.

31. Mr. LAMPTEY said that the world had not changed as much as some would think since the Committee's establishment. The question of sources had arisen from the outset, but the Committee had not taken a definite decision because of the difficulties involved. It was a sensitive subject and many people had been afraid of establishing a monitoring process for racial discrimination. Outside sources could be manipulated to the disadvantage of States parties. Statements made by the Committee could create problems affecting the stability and order of a State. All members of the Committee knew of cases where erroneous newspaper reports had damaged a State. Reminding members that the Committee had had to seek a legal opinion as long ago as 1972, he pointed out that there were differences between the Committee on the Elimination of Racial Discrimination and the other Committees referred to. He was not opposed to taking a definite decision, but it was important that the implications should be understood. In any event, certain sources would have to be ruled out. Some non-governmental organizations had a responsible attitude, but others did not.

32. Mr. ABOUL-NASR said that during his period of service on the Committee he had grown less dogmatic with regard to the use of sources. The legal opinion of 1972 was open to more than one interpretation. The Committee should take it into consideration, but was not duty-bound to follow it. Under the Convention, the Committee could use three kinds of information. First, under article 9 it could use reports from State parties. Secondly article 12, paragraph 1 (a), referred to its obtaining and collating "all the information it deems necessary", a wide definition; in that context, he asked why, if article 11 permitted States parties to complain of omissions by other States, information from other sources should not be equally valid. Thirdly, there was the more restrictive provision of article 14, paragraph 7 (a). In his view, the Committee should use any information it deemed reliable, but when making recommendations it should restrict itself to information submitted by States parties under article 9.

33. Mr. VIDAS said that in order to fulfil its mandate, the Committee should use all available information, including personal knowledge. All specialized agencies and governmental and non-governmental organizations should be made aware that the Committee not only welcomed, but encouraged the provision of information. Unlike Mr. Lamptey, he believed that there were not enough non-governmental organizations concerned with human rights. No member of the Committee had, in his view, misused information from such a source or held different views as to how it should be used. He agreed, however, that recommendations on compliance with the Convention could be based only on the reports of States parties.

34. Mr. GARVALOV said he, too, thought that the Committee must not sidestep its mandate. As individual experts, elected to the Committee, its members should be prepared to vouch for the authenticity of any information they used. It was an established fact that, informally, the Committee drew on information from other United Nations bodies, including United Nations-sponsored studies on human rights, and from regional human rights bodies, where they existed. The human rights meetings in Moscow in September 1991, and in Helsinki in 1992, would undoubtedly provide a wealth of information from various sources. He would be wary of using information from individuals (except under art. 14) or from newspapers.

35. Mr. BANTON said it was a pity that the functions mentioned in paragraph 5 of the note by the Secretariat were not enumerated. He referred the Committee to his own paper, to be circulated shortly, on a programme of action for the Third Decade to Combat Racism and Racial Discrimination in which he had summarized a discussion that had taken place in the Committee in 1970 concerning those functions. It was clear from that discussion that suggestions and recommendations could be based only on documents from States parties, but otherwise the Committee had the right to decide collectively to use other sources of information. There would be circumstances in which as individuals they might have information which they could not check. They might have doubts or feel obligations to States, to victims of discrimination or to other parties. However, there was no point in having a committee of experts if they were not given scope for their expertise. He was sure that the collective common sense of the Committee would overcome any difficulties. The Committee's present practice was well adapted to its situation and there was no need for modifications.

36. Mr. de GOUTTES said that, at a time when discrimination was on the increase, it was important to ensure that members of the Committee had full access to all the information they needed to fulfil their responsibilities. In that regard the Committee should bear in mind the practice of other treaty bodies, such as the Committee against Torture and the Committee on Economic, Social and Cultural Rights.

37. Mr. YUTZIS said he did not think that the Convention imposed any restrictions on sources of information. In that connection, he pointed out that comprehensive information was not always forthcoming from States parties and that material from non-governmental organizations was often of great value in such circumstances. It was in any case for the experts themselves to exercise responsibility in evaluating information, whatever its source.

38. Mr. LECHUGA HEVIA said that it might be ill-advised to take a formal decision on the matter and that existing practice had proved wholly satisfactory.

39. Mr. RESHETOV said that he agreed with Mr. de Gouttes, and pointed out that the reports produced by Amnesty International, for example, were often of a high standard of objectivity and should therefore be taken into account by the Committee in its deliberations.

40. Mr. SONG Shuhua said that, while members should avail themselves of all sources of information, it was important to avoid a one sided interpretation of such material, particularly when the Committee was making recommendations to Governments.

41. Mrs. SADIQ ALI agreed with the previous speaker on the need for caution in the interpretation of material from unofficial sources, but felt that experts themselves were best able to judge what constituted reliable data.

42. Mr. SHERIFIS said that, although a country's report was obviously the prime source of information, due account should be taken of the excellent material produced by Amnesty International and other non-governmental organizations which enjoyed general esteem, and also of the growing body of decisions in the human rights field emanating from the Conference on Security and Cooperation in Europe.

43. The CHAIRMAN said that a satisfactory formulation might state that in regard to "the use of information from different sources, the Committee will continue to make its suggestions and general recommendations on the basis of the examination of reports and information received from States parties as laid down in article 9, paragraph 2, of the Convention. At the same time, in examining the reports of States parties, members of the Committee must have access, as independent experts, to all other available sources of information, including those of non-governmental organizations, as appropriate, which they should use responsibly and judiciously." He would make the text of his proposal available to the Committee in writing so that the discussion on the matter could be concluded at the next meeting.

The meeting rose at 6.15 p.m.