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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

PROVISIONAL SUMMARY RECORD OF THE 925th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. FERRERO COSTA
Mr. SHAHI

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The meeting was called to order at 10 a.m.

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 (concluded)

1. The CHAIRMAN recalled that on the previous day Mr. Wolfrum and Mr. Ferrero Costa had pressed for non-governmental organizations to be expressly mentioned in the concluding statement on the sources of information

to be used by the Committee, which he himself had drafted. The final sentence, as amended by Mr. Wolfrum, now read as follows: "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."

2. He considered that the amendment in no way modified the substance of his statement and accordingly suggested that the Committee adopt the amended text.

3. Mr. LAMPTEY said that he could not endorse the concluding statement by the Chairman as amended by Mr. Wolfrum. He was not against non-governmental organizations (NGOs), but he did not see why the Committee should mention them rather than other organizations; if it did so, it would have to draw up a list of those NGOs which it considered to be trustworthy.

4. It should be borne in mind that members of the Committee engaged in a dialogue with representatives of States parties, who sometimes reacted violently to certain affirmations, and the Committee's image might be tarnished as a result.

5. In conclusion, he proposed that the concluding statement by the Chairman should end after the words "... to all other available sources of information".

6. Mr. FERRERO COSTA said that he did not understand how the Committee could refuse to make a specific reference to NGOs, while acknowledging that it used the information supplied by them.

7. Obviously, some NGOs were less trustworthy than others. The same could be said of any other source of information. In fact, it was up to every member of the Committee to use the information available to him "responsibly and judiciously", as was indicated in the last sentence of the concluding statement by the Chairman.

8. The reason why it was advisable to make a specific reference to NGOs, as most United Nations committees had already done, was that they played an increasing role in the defence of human rights and quite undeniably supplied a great deal of information which enabled the Committee to do its work more efficiently.

9. If, after such a long debate, the Committee decided not to mention NGOs, its image would suffer as a result, since such an attitude might be interpreted as a negative assessment, by the Committee, of NGOs as a whole.

10. In conclusion, he considered that the text proposed by the Chairman was the outcome of mutual concessions and should therefore be adopted by consensus.

11. Mr. WOLFRUM associated himself fully with what had been said by Mr. Ferrero Costa. His point of view was not so far removed from Mr. Lamptey's as it seemed. Mr. Lamptey had said that he, like all other members of the Committee, had used information emanating from NGOs. That was precisely what was indicated in the concluding statement.

12. To be sure, members of the Committee had a duty to check very carefully on the information available to them, since even the most trustworthy NGOs were not exempt from error. That was why the preparation of a list of trustworthy NGOs, as proposed by Mr. Lamptey, did not seem to him to be appropriate.

13. Mr. VIDAS said that he supported the text proposed by the Chairman and suggested an amendment which, he hoped, would make it possible to

reach an agreement. The last part of the last sentence would read as follows: "... to all other available sources of information, governmental and non-governmental".

14. Mr. ABOUL-NASR said that he could not support the text proposed by the Chairman, both because he considered that there was no point in stating that members of the Committee were "independent" experts or that they should use the information available to them "responsibly and judiciously" and because he did not see why the Committee should mention NGOs rather than specialized agencies such as UNESCO or ILO, which took an active part in the campaign against discrimination. Thus it was not so much a question of excluding NGOs, as of not favouring them in relation to other bodies.

15. He therefore proposed that the last part of the Chairman's text, beginning with the words "including those of non-governmental organizations ..." be deleted.

16. Mr. LECHUGA HEVIA reiterated his position that, even if everybody used the information supplied by NGOs, he did not see why NGOs should be mentioned rather than other organizations.

17. Mr. de GOUTTES said that he fully supported the text proposed by the Chairman. The documents and information emanating from NGOs often arrived in disorder and through channels of which some members of the Committee were at times unaware. Such a lack of transparency, which sometimes led to misunderstandings, could be corrected if the practice adopted by certain committees, particularly the Human Rights Committee, were followed. In the latter Committee, for example, the secretariat transmitted the documents to the members of the pre-sessional working groups.

18. Could not the Committee on the Elimination of Racial Discrimination request the secretariat to transmit the documents which it received from NGOs to the country rapporteurs and members of the Committee? In that way the impression of non-transparency and poor communication could perhaps be diminished.

19. Mr. SONG Shuhua said that he did not understand why some members of the Committee insisted on making a specific reference to NGOs rather than to other sources of information to which the Committee also had recourse.

20. The CHAIRMAN suggested that the meeting be suspended so that Mr. Lamptey, Mr. Ferrero Costa, Mr. Aboul-Nasr, Mr. Wolfrum and Mr. Vidas could try to prepare a compromise text.

The meeting was suspended at 10.35 a.m. and resumed at 10.45 a.m.

21. The CHAIRMAN read out the following compromise text prepared by Mr. Lamptey, Mr. Ferrero Costa, Mr. Wolfrum and Mr. Vidas: "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, governmental and non-governmental."

The amended text was adopted unanimously.

Mr. Ferrero Costa took the Chair.

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

Initial report of Uganda (CERD/C/71/Add.2)

22. Mrs. SADIO ALI, Country Rapporteur, pointed out that ethnically Uganda was an extremely complex multiracial country. The three principal linguistic groups were the Bantu, the Nilotic and the Nilo-Hamitic. In the forests in the extreme south-west Pygmies were also to be found. The present frontiers cut across linguistic and ethnic regions, and more than 40 ethnic groups lived together in Uganda. English was the official language. Among the many languages spoken, Luganda was the most widely used.

23. Islam had already been brought to Uganda around 1870. Since the introduction of Christianity, religion had become an important factor making for political rivalry.

* Resumed from the 923rd meeting.

24. In 1969, Uganda had 74,000 inhabitants of Indo-Pakistani origin, known as "the Asians", who had been engaged mainly in commerce, and 9,500 Europeans, working mostly in the liberal professions. In August 1972, Idi Amin had decided to expel those Asians who did not have Ugandan nationality.

25. The population growth rate was 3.8 per cent and the population was estimated to be 16.2 million, as against 9.5 million in 1969. Figures for different ethnic groups were not available.

26. In 1988 defence had accounted for 26.3 per cent of the total budget, education for 15 per cent, health for 2.4 per cent, and housing and social security and welfare for 2.9 per cent. In 1985 the illiteracy rate had been 55 per cent for women and 43 per cent for men.

27. The Government had undertaken economic reforms with the assistance of the International Monetary Fund (IMF) and the World Bank.

28. She then made a brief survey of the country's recent history, which explained the problems that the Government was currently encountering in its efforts to achieve national integration.

29. In 1971 Milton Obote, who had been President since independence, had been overthrown by Idi Amin. In 1962 President Obote had suspended the Constitution and arranged for full power to be vested in himself. In 1967 he had had a new Constitution adopted; it was still in force.

30. After taking power, Idi Amin had turned against the troops from President Obote's tribe, the Langi, and their neighbours, the Acholis. Many of them had been killed or had had to seek refuge in the Sudan or the United Republic of Tanzania. Idi Amin had replaced them by persons from his own district, the Western Nile District.

31. Idi Amin had become increasingly brutal. It is estimated that between 1971 and 1975 from 100,000 to 500,000 persons had lost their lives or disappeared and that about 1 million persons had lost their homes. In 1977 the Conference of Heads of State of the Commonwealth had condemned Uganda for its violations of human rights.

32. The supporters of the former President, Milton Obote, had shown themselves to be resolute opponents of the regime. Milton Obote had returned to Uganda and had begun his election campaign under the colours of his old party, the Uganda People's Congress. A large number of presumed political opponents had been crossed off the electoral rolls. In its report, the

Commonwealth Observer Group had described the election campaign as "unpardonable and inexcusable" and "contrary to the law and having no basis in fact". In regions such as the Western Nile and Bouganda, where the Government had few supporters, the army had pursued a scorched earth policy and had engaged in systematic massacres. In mid-1983, Zaire had hosted 60,000 refugees from the Western Nile Province, and the Sudan 20,000. On the frontier with Rwanda, forced displacements had taken place; 25 to 30 per cent of the persons affected by the operation had been genuine Rwandese refugees.

33. Article 20 of the 1967 Constitution, which was still in force, constituted the legal foundation for combating racial discrimination. However, the Committee had taken the view that the provisions of that article were not sufficient to guarantee the implementation of the Convention. As was indicated in the initial report, no specific legislation had been enacted to make the provisions of the Convention directly enforceable before Ugandan courts; the High Court of Uganda had jurisdiction in all cases arising from the provisions of relevant international instruments to which Uganda was a party (CERD/C/71/Add.2, para. 9).

34. Politically, President Museveni had abolished the parliamentary structure of the State in order to set up an unelected Provisional Government with the support of the army and of the National Resistance Council, composed of a cross-section of political, ethnic and religious personalities. Pending the adoption of a new constitution, parties were forbidden to engage in political activity and power was becoming increasingly centralized. Although the 1967 Constitution remained technically in force, its provisions concerning the legislative and executive powers were suspended.

35. The 10-point plan drawn up by President Museveni for the interim period provided for the restoration of democracy in the form of a popular village-based democracy, the security of persons and property, the unity of Uganda - religion and tribalism no longer having any political sway - and the campaign against underdevelopment. Furthermore, the Government had enlarged the mandate of the Commission of Inquiry responsible for examining the abuses of the previous regimes by giving it jurisdiction to cover current human rights abuses once the present inquiry was completed.

36. Moreover, the policy pursued by the National Resistance Movement (NRM) towards refugees had been generous, and no case of expulsion or forced repatriation of refugees had been reported in 1990. In 1987 Uganda had acceded to the OAU Convention governing certain aspects of refugee problems peculiar to Africa.

37. With regard to the preparation of a new constitution, the President had undertaken to take account of public opinion on the subject of Uganda's future regime.

38. According to paragraph 18 of Uganda's initial report, the Ugandan Government had not deemed it necessary to enact specific legislation to prohibit racial discrimination, since it had the means to implement the law for the purpose of guaranteeing security and tranquillity for all. Nevertheless, much remained to be done to restore the rule of law in Uganda.

39. The Ugandan court system consisted of magistrates' courts, the High Court and the Supreme Court. Provision was made for procedural safeguards including bail and the right to appeal a verdict to a higher court. However, a systematic shortage of resources ensured that the process was slow and difficult. In some political and security cases, the judiciary was not independent of the executive.

40. In accordance with the recommendations made by the World Bank, the Government intended to reduce the large number of civil servants. The inefficiency and corruption in the civil service had been attributed to civil

servants' low level of remuneration.

41. Turning to the question of the implementation of the relevant articles of the Convention, she pointed out that, according to Uganda's initial report (CERD/C/71/Add.2), article 20 of the 1967 Constitution prohibited the adoption of any law that was discriminatory in itself or in its effects. The same article provided that no person should be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. The exceptions permitted conformed to those provided for in article 1, paragraphs 2 to 4, of the Convention (para. 11). According to paragraph 4 (g) of the same article, the legislature was empowered to make laws by which persons of a particular race or national or ethnic origin might be accorded any privilege which, having regard to its nature and special circumstances ... was reasonably justifiable in a democratic society. To that end, the Government had taken special measures of assistance for refugees in Uganda, including the allocation of land and the provision of education and social services. Furthermore, in November 1982 Parliament had adopted the Expropriated Properties Act under which any property expropriated by the military regime had become revested in the Government under the management of the Ministry of Finance (para. 16). Nevertheless, the sale of that kind of property had sparked off anti-Asian feelings among some Ugandan businessmen, who feared that returning Asians might dispossess them.

42. There were apparently no texts of legislative, judicial or administrative measures giving effect to the provisions of article 2, paragraph 1, of the Convention. However, there were certain indications that the Government was reconsidering its policy. For example, an Inspector General of Government had been appointed in 1986 to examine cases of corruption, mismanagement or human rights violations; he had, nevertheless, played no part in the inquiry into the exactions attributed to the National Resistance Army (NRA) in the northern and eastern provinces. Furthermore, guerrillas of the Holy Spirit Movement (HSM) and the Uganda Peoples Army (UPA) continued to operate in the north and east of the country. In general, a codification of the applicable legal provisions was urgently needed.

43. In his 10-point plan President Museveni had undertaken to secure the unity of Uganda. Nevertheless, ethnic cleavages, tribalism and religious intolerance continued to fuel the wars and political conflicts from which Uganda had suffered for decades. The Government was, however, trying to place at least one representative of every tribe, region and religious group in the NRM cabinet.

44. Measures had been taken to implement article 2, paragraph 2, of the Convention, and the poverty alleviation and economic recovery programmes should, thanks to substantial assistance from abroad, yield results provided that stability was restored in the country.

45. As far as the implementation of article 3 was concerned, Uganda had no diplomatic or consular relations with the apartheid regime of South Africa. Under the legislation on emigration and passports, Ugandan citizens were not allowed to travel to, or reside in, South Africa (para. 22). The Ugandan Government had ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid.

46. With regard to the implementation of article 4, it was stated in paragraphs 25 to 27 of Uganda's initial report that the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and incitement to violence against any race or ethnic group were punishable under the provisions of the Penal Code relating to offences against the State, the person or liberty. Pursuant to the provisions of the Penal Code and of the Constitution that prohibited racial discrimination, the formation of racist associations or organizations was considered to be illegal and criminal.

Finally, it was stated that Uganda intended to comply with decision 3 (VII) of the Committee on the Elimination of Racial Discrimination, adopted on 4 May 1973, and that it would transmit to the Committee and to the Secretary-General the text of the relevant legislation. In that connection the Committee, at its 680th meeting, had taken the view that it would not seem that the provisions of the Penal Code summarized in paragraph 26 of the report covered all the situations provided for by the Convention. They appeared to deal with incitement to violence, but the other hypotheses provided for in article 4, under which simple incitement to racial hatred, for example, could be the basis for legal action, had not been taken into account (CERD/C/SR.680 para. 13). The Committee had also asked whether senior officials who had broken the law had been punished.

47. As far as the implementation of article 5 of the Convention was concerned, it should be borne in mind that until the insurgency in the northern provinces had been put down it would be difficult for Uganda to guarantee to everyone equality in regard to civil, political, economic, social and cultural rights. An independent association created in 1990, the Uganda Law Society, issued a human rights report in which it criticized the NRM's failure to respect the law and the independence of the judiciary. The Committee on the Elimination of Racial Discrimination itself had requested further information on those provisions of the Constitution that provided a legal basis for a series of fundamental rights. In the case of civil and political rights, most of the political and extrajudicial executions had been the result of the military conflict between the NRA and opposition elements, and it would seem that all parties had been involved in the killings. The right to security of the person and to protection by the State, which was provided for in the texts, was largely disregarded. Furthermore, no elections would be organized until the new constitution had been prepared. In theory, every Ugandan had the right to freedom of movement within the country, but in practice travel in the northern and eastern regions had remained difficult because of sporadic attacks by heavily armed guerrillas and bandits. Ugandans were free to emigrate and to travel abroad. The right to nationality remained unfettered, as well as the right to marriage and to the choice of spouse. Some 80 per cent of the country's total population survived on subsistence agriculture and small-scale cultivation. The property of married women was traditionally held in the name of their husbands. There was no State religion in Uganda, and the Government exercised no control over denominational publications. In 1950 the authorities had not allowed the re-registration of the Jehovah's Witnesses, but the Prime Minister was reported to have intervened in their favour. Over 15 newspapers in the country published a wide range of points of view and reported on such matters as human rights violations, the civil war and the corruption that was said to exist in governmental and military circles. Nevertheless, the Government had arrested three journalists because of the questions they had asked President Kaunda of Zambia at a press conference. The right to freedom of opinion and expression, too, had thus been subjected to considerable restrictions, due to the ban on the activities of political parties.

48. With regard to economic, social and cultural rights, although in principle the State recognized the right to work, it was not in fact possible, having regard to the country's present level of development, for it to guarantee the exercise of that right to everyone in Uganda. Employment in State enterprises and the public sector was competitive and determined on the basis of merit, without discrimination of any kind (CERD/C/71/Add.2). Wage and salary earners were obliged to supplement their income from other sources.

49. Under Ugandan law, all workers had the right to form trade unions. The exercise of the rights set forth in article 5 (d) (iii) to (v) of the Convention depended on the overall economic situation, defence spending making big holes in the budgets needed for other activities. Finally, all Ugandan citizens were reported to exercise their right to equal participation in cultural activities, without distinction (para. 44).

50. As far as the implementation of article 6 was concerned, recourse procedures in cases of discrimination seemed to be ineffective, and Uganda would have to enact special laws in order to put that article into practice.

51. With regard to the implementation of article 7, it was stated in the initial report that the Government was considering the introduction of specific courses on human rights (para. 48). The attention of the authorities should be drawn to the supplementary guidelines concerning the implementation of article 7 of the Convention. It was, however, noteworthy that the Uganda Human Rights activists had left Sweden to settle in Uganda after the fall of the former President Obote. The group actively engaged in informing the population of its civil rights, prepared confidential reports to the Government on the subject of abuses, and made public statements.

52. In conclusion, her evaluation of Uganda's report was as follows:

- (i) The initial report was no longer up to date, since in the meantime President Museveni and the NRA had taken power in 1986.
- (ii) Pending the adoption of the new constitution, it was difficult to make an accurate assessment of what judicial, legal and administrative measures had been taken to implement the Convention.
- (iii) President Museveni's 10-point programme gave an idea of the direction taken by his policies. The World Bank, IMF and the European Economic Community seemed to support that plan, as did NGOs such as OXFAM, the International Committee of the Red Cross and the Save the Children Fund.
- (iv) In the final analysis, everything would depend on the speed with which the Government and other parties put an end to the military conflict which was raging in the north and east, thereby establishing peace in the country. The years of unrest had contributed to the deterioration of Uganda's social fabric and to the decline of its infrastructure. Because of the insurgency, civilians had been displaced, arbitrary arrests and detentions had taken place, the right to a fair trial and the freedoms of expression and assembly had been restricted, and citizens were unable to change their Government.

53. The CHAIRMAN congratulated Mrs. Sadiq Ali on her exhaustive and thorough work, which gave an updated picture of how the situation in Uganda had evolved since the Government had submitted its initial report.

54. Mr. WOLFRUM unreservedly supported all the elements in the report presented by Mrs. Sadiq Ali. However, he wished to raise three points. First, certain activities of the Ugandan army in 1988 and 1989 had led to massacres of civilians and the Ugandan Government had indicated that a commission of inquiry would establish the facts. Three years after those incidents, the commission had not arrived at any concrete results. Would that be due to administrative problems or to a lack of zeal in revealing what had really happened? Second, another commission of inquiry had been established to shed light on civilian losses in September 1990 following action taken in the northern region against members of the Holy Spirit Movement. Once again, no conclusions had been published. Third, over 100,000 villagers in the Kumi district were reported to have been evacuated at the beginning of 1990 in order to be transferred to "protection camps". The operation had caused a loss of human lives, since the infrastructure of the camps, particularly food, had been inadequate. There again, there was a lack of information on that kind of incident. It would therefore be desirable if, in its next report, the Ugandan Government could supply further information on the three points he had raised.

55. Mr. de GOUTTES stressed the exemplary nature of Mrs. Sadiq Ali's report.

56. Elaborating upon one of the points raised by Mr. Wolfrum, he inquired whether the Committee had any information on the report thought to have been prepared by Amnesty International in December 1990 on the massacres of civilians committed by the Ugandan armed forces in the rural areas. If such a report had been published, what had been the reaction of the Ugandan Government?

57. Mr. BANTON joined previous speakers in congratulating Mrs. Sadiq Ali on her report.

58. Assuming that the assessment made by Mrs. Sadiq Ali at the end of her oral statement would be used for preparing the Committee's conclusions concerning its consideration of Uganda's report, he would like to add a passage reporting the Committee's interest in the bodies responsible for inquiring into human rights violations, especially those having an ethnic dimension. In particular, he was thinking of the Commission of Inquiry set up in August 1986 and of the Council Investigative Division, a permanent body which the Government had agreed in principle to institute. It would be helpful if the Government could indicate the problems which those bodies had encountered and the results which they had been able to obtain.

59. Mrs. SADIQ ALI replying to Mr. de Gouttes, said that a document entitled "Memorandum to the Government of Uganda on an Amnesty International mission to Uganda in January 1982 and further exchanges" had been published in April 1983.

60. She proposed that, bearing in mind the comments which Mr. Banton had just made, the evaluation which she had read out should be supplemented by a fifth paragraph reading:

"(v) Great interest was expressed concerning the commissions which had been set up to inquire into human rights violations, and in particular into violations having ethnic dimensions, the problems which those commissions had encountered, and the results which they had obtained."

Mr. Shahi resumed the Chair.

61. Mr. ABOUL-NASR thanked Mrs. Sadiq Ali for her very comprehensive report but requested that she review the conclusions. It did not seem very diplomatic, in paragraph (i), to refer to the coming to power of the President; the initial report would be out of date even if the President had remained the same person. In paragraph (ii), the reference to the impending adoption of a new constitution was tantamount to unduly singling out Uganda, since one third of the States parties to the Convention currently had their constitutions suspended. Furthermore, even if a new constitution had been adopted, that would not give Uganda a free hand. The implementation of article 4 of the Convention, in particular, could not be kept in abeyance pending the adoption of a constitution. The attitude of the World Bank, IMF and so on reflected in paragraph (iii) had no connection with racial discrimination; it was probably concerned with economic reforms. Neither were the opinions of the NGOs mentioned in the same paragraph very pertinent. In paragraph (iv) it was stated that citizens were unable to change their Government. Why conclude that Ugandan citizens wished to change their Government? He therefore suggested that Mrs. Sadiq Ali review her conclusions, with the assistance of other members of the Committee, so as to make them less divergent from the Committee's conclusions concerning other reports and more in harmony with the Convention.

62. Mr. YUTZIS noted that a political change was obviously under way in Uganda, with administrative, economic, social and other consequences. What

was not so obvious, on the other hand, was the relationship between political problems and ethnic, racial or linguistic groups. In many cases racial problems were the surface expression of political problems. The Committee therefore needed to obtain up-to-date information on that subject.

63. The CHAIRMAN said that, in view of the comments that had just been made, he wished to suggest that Mrs. Sadiq Ali, together with Mr. Banton and Mr. Aboul-Nasr, prepare a final version of the conclusions which the Committee could adopt. For the moment he thanked Mrs. Sadiq Ali and declared the reconsideration of Uganda's report to be concluded.

Fifth periodic report of Fiji and previous reports: (CERD/C/89/Add.3, CERD/C/R.63/Add.1, CERD/C/17/Add.2 and CERD/C/64/Add.4)

64. Mr. WOLFRUM, Country Rapporteur, began by recalling that Fiji's fifth periodic report (CERD/C/89/Add.3), which had been almost identical to its fourth periodic report (CERD/C/64/Add.4), had been considered by the Committee at its 629th meeting in 1982. On that occasion several members of the Committee had expressed doubts as to the validity of the reservations entered by Fiji when it had acceded to the Convention. Fiji had reserved the right not to apply articles 5 (c), 5 (d) (v), 2, 3 or 5 (e) (v) as far as the school system was concerned. Fiji had also made an interpretative statement concerning article 4. Doubts had also been expressed as to whether Fiji's Constitution and Penal Code were fully in conformity with its obligations under article 4, and whether the electoral system and land legislation were in conformity with article 5. It had also been pointed out that the demographic balance was delicate and that the Committee therefore had to be cautious in any recommendation concerning the internal political balance in Fiji.

65. According to the 1976 census, described in the fifth report, 259,932 ethnic Fijians, 292,896 Indians and 35,310 persons of other origins had been living in Fiji at that time. According to the 1986 census, there had been 329,000 Fijians, 348,000 Indians and 37,000 persons of other races. Since the coup d'état in 1987 many Indians had emigrated.

66. In May 1987, following the defeat of the Alliance Party by the Indian-dominated National Federation and Labour Party, Col. Rabuka had taken power in a bloodless coup d'état. He had set himself the goal of maintaining power in the hands of ethnic Fijians, who accounted for 47 per cent of the population, as well as their rights to the land, of which they controlled 83 per cent. The 1970 Constitution had guaranteed the land rights of ethnic Fijians. It had been abrogated and Fiji had become a Republic in 1987; in 1990 the "Constitution of the Sovereign Democratic Republic of Fiji" had been promulgated.

67. In that Constitution a central role was given to the Great Council of Chiefs (Bose Levu Vakaturaga). Before the coup d'état the Great Council of Chiefs, originally created by the British colonial Government, had comprised all Fijian members of the House of Representatives, eight chiefs appointed by the Minister for Fijian Affairs, seven other Fijians appointed by him and two or three representatives, depending on the population, from each of the 14 provinces. Since the coup d'état, the members of the House of Representatives had been excluded and there had been no more elections to the provincial councils, the members of which had been appointed by the President. On 9 June 1990, the Great Council of Chiefs, in its rump composition, had decided that in future it would consist of 42 representatives of the provincial councils, on the basis of three for each province, three nominees of the President, three nominees of the Prime Minister, one nominee of the Rotuma Council, and five ex-officio members - namely the President, the Prime Minister, Col. Rabuka, the Minister for Fijian Affairs and the Permanent Secretary for Fijian Affairs. It was noteworthy that the representativity of the Great Council of Chiefs was diminished by the fact that all the provinces had the same number of representatives whereas their populations varied

substantially.

68. Under the Constitution, the Great Council of Chiefs chose the President and 24 of the 34 members of the Senate and must be consulted by the Cabinet on measures to advance and protect Fijians. The President chose the Prime Minister from the House of Representatives and, on his advice, the other ministers, who might be from either House of Parliament. A majority of members of the Cabinet could thus be appointed without ever having been elected.

69. In elections to the House of Representatives, there were several racial rolls: one for Fijians, one for Indians, one for Rotumas and one for the other races. Racial divisions were thus institutionalized. The "other races" - Europeans, part-Europeans, Chinese and other Pacific islanders - had 5 seats, the Indians 27 and ethnic Fijians 37. Thus the Indians were underrepresented and the Fijians - and, to a lesser extent, the other races - overrepresented. In the Senate, the Indian representation was insignificant: there were 24 Fijians appointed by the President on the advice of the Great Council of Chiefs, 1 Rotuma and 9 members of other communities appointed by the President. Even among ethnic Fijians the distribution of seats in the House of Representatives was not equitable: 5 were allotted to the towns and 32 to the provinces, whereas, according to the 1986 census, 33 per cent of ethnic Fijians lived in the towns. Another obstacle for ethnic Fijians was that they had to be enrolled in the registers of their traditional clans, whereas one third had gone to live in the towns and many had moved to other provinces. That had been noted in the report submitted in 1989 by the Fiji Constitution Inquiry and Advisory Committee, called the "Manueli Report", from which he quoted. In that report it was stated, in particular, that a considerable number of Fijians were not enrolled in the clan registers and therefore could not vote.

70. Chapter II of the Constitution provided that freedom of expression could be limited by laws designed to protect "the reputation, the dignity and esteem of the institutions and values of the Fijian people, in particular the Great Council of Chiefs". Freedom of movement could also be restricted by laws limiting movement or residence in Fiji of certain persons "in the interest of defence, public safety or public order". Whereas a two-thirds majority of both Houses of Parliament was required to amend the provisions of chapter II, those provisions could be suspended by an act invoking special powers against "subversion" adopted by a simple majority or by the proclamation of a state of emergency by the President. That rule might become very relevant in the future, since, according to section 94 (3), "it shall be the overall responsibility of the Republic of Fiji military forces to ensure at all times the security, defence and well-being of Fiji and its peoples".

71. In conclusion, he pointed out that Fiji's previous reports were out of date, as were the questions asked by members of the Committee. At the most recent session of the General Assembly, the representative of India in the Third Committee had accused Fiji of racial discrimination. He recommended the Committee to send a letter to the Government of Fiji requesting information on the constitutional changes and on the way in which the Convention had been implemented in Fiji since the submission of its latest report.

72. Mr. ABOUL-NASR expressed regret that no representative of Fiji was present to participate in the reconsideration of his country's reports. He requested the country rapporteur to confirm whether the Indians of whom he had spoken really were Fijian citizens and whether the Great Council of Chiefs was composed solely of Fijians. If the replies to those questions were affirmative, the accusation made by the representative of India to which Mr. Wolfrum had referred was understandable.

73. Mr. WOLFRUM confirmed that the Indians of whom he had spoken were indeed Fijian citizens; their ancestors had been in Fiji for less time than those of

ethnic Fijians but they held the same citizenship. The Indians did not participate in the Great Council of Chiefs. The statement by the representative of India in the Third Committee was self-explanatory.

74. Mr. de GOUTTES said that the thorough analysis which Mr. Wolfrum had just made of the provisions of the Fijian constitution was, to say the least, surprising; since the 1987 coup d'état the Constitution assured ethnic Fijians supremacy and a disproportionate number of seats in Parliament, thereby institutionalizing ethnic discrimination. The Committee had rarely had occasion to identify such discrimination. It must therefore be pointed out, in the letter to be sent to the Fijian Government, that the situation was exceptional. Information should be requested from the Government on the acts of violence that had been committed in Fiji against members of the Indian community and against Indian temples. He was referring, in particular, to the kidnapping of a teacher who, it so happened, was president of a "group against racial discrimination".

75. Mr. BANTON took the view that if the Committee wanted the Fijian Government to resume the dialogue, it must encourage it to do so by indicating in its comments that it was aware of the special situation in which the country found itself. The reason why the States parties had not objected to the reservations formulated by Fiji in accordance with article 20, paragraph 1, of the Convention or brought the matter to the Committee's attention as provided for in article 11, paragraph 1, might be that they had wished to show the Fijian Government that they were aware of Fiji's special position.

76. The situation in Fiji was comparable to that of other countries which had been colonized. Under the colonial regime, ethnic minorities had left their regions to play a useful role in the political and economic system established by the colonial authorities. However, when those countries had recovered their independence, the minorities had been left isolated. Such had been the case, for example, of the Chinese in Malaysia and Indonesia or of the Indians in Guyana, Malaysia or Myanmar. It was noteworthy that quite a number of those countries had not ratified the Convention or were encountering difficulties in complying its terms. The Committee might indicate that it considered Fiji to be one of those countries.

77. Nevertheless, Fiji should not put up permanent barriers between the different ethnic groups. The Committee should request the Fijian Government to send it some information on the policy pursued in order to eliminate all forms of racial discrimination and to promote understanding among all races, as well as on the measures taken to that end. The point at issue was not to obtain the withdrawal of the reservations formulated when the Convention had been ratified, but to ascertain what progress had been made.

78. In connection with the electoral system, he pointed out that, when Fiji's fifth periodic report (CERD/C/89/Add.3) had been considered, Mr. Partsch had stated that, in view of Fiji's demographic composition, the adoption of an electoral system modelled on the British system would make the indigenous population a permanent minority. He hoped that Fiji would display imagination and adopt an electoral system which took account of the country's ethnic diversity.

79. Finally, referring to the comments made by Mr. Aboul-Nasr, he wished to point out that, when Fiji's fifth periodic report had been considered, the Chairman of the Committee, speaking in his personal capacity, had considered that the Fijian electoral law was not concerned with a distinction between citizens and non-citizens but with a distinction among citizens and that it was therefore not covered by article 1, paragraph 2, of the Convention.

80. Mr. FERRERO COSTA said that he approved of Mr. Wolfrum's observations and considered that Mr. Banton had added some very important sociological and

historical elements which could help the Committee to examine and understand Fiji's special situation. Nevertheless, he was very concerned about the application of the Convention in Fiji. First, the Fijian Government had not submitted a report since 1982, whereas it had an obligation to submit one every two years. The Committee should remind it of its duties and request it to renew the dialogue and at the same time notify it of the Committee's concern regarding the constitutional rules adopted, which led to the institutionalization of a system establishing a distinction between the various ethnic groups. In practice, the population of Indian origin would be subjected to racial discrimination. He would like the Committee to invite the Fijian Government to give, in its next report, some information on the implementation of article 5 of the Convention, particularly with regard to the situation of the population of Indian origin in relation to that of ethnic Fijians.

81. With regard to the reservations made by Fiji when it had ratified the Convention, he pointed out that, when Fiji's fifth periodic report had been considered, the Chairman, speaking in his personal capacity, had stated that the Committee had already indicated that, in its opinion, an interpretative statement or declaration could not be considered to be a reservation and consequently could in no way modify the implementation of the Convention. The Chairman had urged the representative of Fiji to draw his Government's attention to the matter again. Mr. Houshmand, the representative of the Secretary-General, had indicated that, when Fiji had expressed reservations with regard to the Convention, the text had been distributed as usual by the Legal Counsel. The other parties had made no objection or observation at that time. It had therefore been concluded that the Convention had entered into force in Fiji, subject to those reservations. He found it regrettable that under the terms of article 20 of the Convention, a reservation could be held to be incompatible with the provisions of the Convention only if two thirds of the States parties considered it to be so. In the present case, however, the reservations formulated by Fiji were contrary to the very spirit of the Convention. He proposed that the Committee request the Government to withdraw its reservations.

82. He approved of the idea of sending a letter to the Fijian Government informing it of the position taken by the Committee, which considered that the Fijian Constitution was an act of racial discrimination, and inviting it to review its reservations and to include in its next report some information on the economic and social situation of the population.

83. Mr. YUTZIS said that the Committee ought to consider the possibility of grouping States according to their special features and then determining what methodology should be adopted for the analysis of their reports. That was what had been done, for example, by the Committee with regard to those States which did not comply with their reporting obligations. Special Rapporteurs had been appointed to look into the matter for the purpose of providing the Committee with the relevant information.

84. Commenting on Mr. Banton's observations, he recognized that it was sometimes useful to take account of historical elements, not to justify but to explain the actual situation in a given country.

85. Faced with the reservations that had been formulated and the fact that no report had been submitted for nine years, the Committee, while notifying the Fijian Government of its concerns, should do everything possible to induce the Government to resume the dialogue that had been interrupted. As a member of the Committee, he endorsed Mr. Wolfrum's comments and considered that the Fijian Government should send a report and a representative to inform the Committee on the facts of concern to it so that it could carry out its mandate properly.

86. Mr. RESHETOV thanked Mr. Wolfrum for his detailed analysis of the

situation in Fiji, but expressed reservations about the direction the discussion was taking. The Committee had concentrated on the problem of the representation of the various ethnic groups in political organs which were considered not to reflect the country's demographic composition. He pointed out that political representation strictly proportional to a country's demographic composition existed nowhere. On the other hand, the Committee had hardly mentioned the current racial tensions in Fiji. The two phenomena were closely linked: the absence of adequate political representation was at the root of the racial tensions.

87. Mr. WOLFRUM proposed that the Committee indicate, in its conclusions, that it deeply regretted the absence of a report and of a representative from Fiji and invite the Fijian Government to resume the dialogue and to take account, in its next report, of the questions that had been put by members of the Committee. Although he doubted that the Constitution was in conformity with the provisions of the Convention, he considered it preferable to wait for a representative of Fiji to provide some explanations on the subject before coming to any conclusion on the subject.

88. The CHAIRMAN noted that Mr. Wolfrum's final comment could have been applied to other countries whose situation had been considered in the absence of a report and of a representative and in respect of which opinions had been expressed.

89. Mr. RESHETOV proposed that the Committee, in its conclusions, thank the Fijian Government for having submitted a report, since other States parties had not even sent an initial report.

90. Mr. YUTZIS asked for which report the Fijian Government should be thanked.

91. Mr. FERRERO COSTA said that he did not agree with Mr. Reshetov's proposal. The Committee had no reason to thank a State whose report had been submitted nine years earlier. He even took the view that Mr. Wolfrum had been very moderate in his remarks and wondered whether the Committee should not, in its conclusions, express its concern regarding the implementation of the Convention in Fiji.

92. The CHAIRMAN suggested that the Committee reflect on that point.

The meeting rose at 1 p.m.