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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 1781st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 16 August 2006, at 10 a.m.

Chairperson: Mr. de GOUTTES

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FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

The meeting was called to order at 10.15 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Suriname

1. Ms. JANUARY-BARDILL (Chairperson of the working group on early warning and urgent action procedures) recalled that the Committee had adopted decision 1 (67) (CERD/C/DEC/SUR/2) in August 2005 following consideration of Suriname under its early warning and urgent action procedure. On reconsideration of the case during the current session, the working group had recommended that the Committee should prepare a draft letter to Suriname, recalling its last decision, drawing attention to general recommendation XXIII concerning indigenous peoples and requesting that detailed information should be included in the country's next periodic report due on 14 April 2007. The working group had also considered that the situation was grave enough for the information to be shared with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Human Rights Council, as it was felt that the Committee had exhausted its means of dealing with Suriname. It was therefore proposed that the Chairperson should send letters to both OHCHR and the Human Rights Council.
2. The CHAIRPERSON said that he took it that the proposal concerning the two draft letters could be approved.
3. It was so decided.

Nicaragua

4. Ms. JANUARY-BARDILL said that the submitting organization had requested that the Committee should initiate its early warning and urgent action procedure to address the violation of the human rights of the Awas Tingni indigenous people of Nicaragua. A ruling of the Inter-American Court of Human Rights in August 2001 had confirmed that the State party had indeed violated the community's human right to property when it had granted a logging concession in Awas Tingni territory without the community's consent. The Court had ordered the State party to implement an effective mechanism for demarcation of indigenous lands and to delimit, demarcate and title Awas Tingni's lands according to its customary law, values, customs and mores. A second ruling had ordered the State party in September 2002 to halt as well as investigate and sanction third party activities in the region. However, Nicaragua had done nothing to comply with those measures, despite continued community complaints. The working group had recommended that since the Committee had already decided to consider Nicaragua under its review procedure, requesting that the State party should submit its periodic report by 30 September 2006, it might be appropriate for the Chairperson to write to the State party, highlighting the submission received from the NGOs and requesting a response on those additional issues in its report.

5. The CHAIRPERSON, seeing no objections, said that he took it the Committee wished to adopt the proposed course of action for Nicaragua.

6. It was so decided.

Lao People's Democratic Republic

7. Ms. JANUARY-BARDILL recalled that the Committee had considered the situation in the Lao People's Democratic Republic under its review procedure in 1992 and 1996 and that it had adopted a decision (CERD/C/63/Dec.1) under its early warning and urgent action procedure concerning the Hmong minority in August 2003. In its concluding observations (CERD/C/LAO/CO/15) of February 2005 on the State party's sixth to fifteenth periodic reports due for submission from 1985 to 2003, the Committee had requested the State party to provide information within one year on follow-up to the Committee's recommendations. The Committee had also decided to send a letter to express its concern about the ongoing detention of the Lao citizens who had accompanied journalists visiting the country in 2003. In its response, the Lao Government had denied that there was any conflict between the Government and the Hmong community. Although the Committee had discussed the Lao situation at length, it had not made any firm recommendation, as Mr. Shahi and Mr. Avtonomov had highlighted a number of complications that warranted further consideration.

8. Mr. SHAHI said that the Committee had received two communications during that session requesting the initiation of the urgent action procedure to review the Hmong situation, alleging that there had been massacres, rapes and killings. One rape in particular had been condemned by the American ambassador to the State party and had been the subject of a strong statement by Amnesty International calling for impartial investigation into the incident. There were very contradictory reports of the situation, as the Government denied any conflict, while according to the communications the hostilities were ongoing. The authors of the first communication regretted that the State party had failed to honour its obligations under the Convention, as indicated by the Government's response of May 2006, in which it continued to deny allegations, ignored the Committee's specific recommendations and gave irrelevant responses to the issues raised. Furthermore, the authors contended that the Government would not cooperate with the Committee on the situation of human rights violations, persistent racial discrimination and grave injustices committed against the Hmong, and urged the Committee to take all the necessary steps towards securing the rights of the Hmong people.

9. The authors of the second communication appealed to the Committee to call for an immediate cessation of hostilities in areas of conflict and to mobilize a United Nations peacekeeping force with emergency humanitarian aid to secure and investigate the atrocities against the Hmong. He agreed that it was necessary to investigate and that emergency humanitarian assistance was desperately needed, but he thought that a United Nations peacekeeping force was premature in the absence of better knowledge of the factual situation. The communication also called for the release of the Hmong civilians who had accompanied foreign journalists on their visit to the country in June 2003. The authors urged the Committee to call for an end to the violations of human rights and racial discrimination by the Lao Government, but it was difficult for the Committee to generalize on the full extent of violations without the report of an impartial fact-finding mission. Finally, the authors appealed for the

Hmong crisis in the Lao People's Democratic Republic to be brought immediately to the attention of the United Nations Secretary-General and the Security Council. In addition, the communication called for the recognition of the Hmong people's economic, social and cultural rights and the right to self-determination, which exceeded the terms of the Committee's mandate and would fall rather under the remit of the Human Rights Committee.

10. The CHAIRPERSON recalled that the Committee had examined the Lao situation under its follow-up procedure on 2 August last and had decided to send a letter to the Lao Government requesting information on a series of issues, particularly the violence against the Hmong minority. That gave rise to a procedural problem; since the Committee had already adopted a decision under the follow-up procedure, it could not also address the situation under the early warning and urgent action procedure.

11. Mr. KJAERUM confirmed that the letter to the Lao Government under the follow-up procedure was almost finalized but that, since the Committee's discussion on the situation, he had decided to include in the letter a request that the Government should extend an invitation to the Independent Expert on minority issues to visit the country in order to analyse the situation of the Hmong people. Such a recommendation was in line with the integrated approach and the development of greater interaction between the Committee and other mechanisms. The Committee must choose to consider the situation under one or other of the procedures, as it would be confusing for the State party if it was addressed under both.

12. Mr. SICILIANOS said that in order to avoid such duplication there was a need for greater coordination between the working group on follow-up procedures and the working group on early warning and urgent action. Since the Committee had already decided to address the situation under the follow-up procedure, the matter should be considered closed. He supported Mr. Kjaerum's proposal to include in the letter the recommendation that the State party should extend an invitation to the Independent Expert on minority issues.

13. Ms. DAH agreed that the situation could not be considered under two different procedures.

14. Mr. AMIR said that in response to the Committee's letter requesting the release of the Lao prisoners, the Lao Government had stated that the prisoners were guilty of treason, but that in the light of extenuating circumstances, the case would be reconsidered. Since then, the Lao Government had informed the Committee that the Congress had decided to criminalize racial discrimination, but that the decision with regard to the Lao prisoners remained unchanged. At a recent meeting with a Hmong delegation, he had said that the Committee would be sending a letter to the Lao Government welcoming the decision to criminalize racial discrimination, but regretting that the decision regarding the Lao prisoners had not been revised, proposing that there should be independent judges dealing with the case, and requesting a response to the new information that had been brought to the Committee's attention. He agreed that the situation should be dealt with under a single procedure.

15. Mr. AVTONOMOV said that, while the State party Government should certainly be reminded of its obligations under the Convention, it was difficult to assess the situation of the Lao Hmong on the basis of information received to date. While nothing justified the reported serious violations of human rights, the activities of Hmong rebel groups had created an

extremely complex situation, which was further exacerbated by the Government's opium elimination operations. Additional information was required in order to establish whether the reported violations specifically targeted the Hmong people, or opium growers and traffickers in general. He, too, thought it opportune to encourage the State party Government to extend an invitation for the Independent Expert on minority issues to visit the country and to request supplementary information in the framework of the follow-up procedure.

Peru

16. Ms. JANUARY-BARDILL said that the working group on early warning and urgent action procedures had received a communication concerning human rights violations against the Andean communities of Tacna in southern Peru, who reportedly suffered hunger and poverty as a result of the State party's failure to protect their water rights. The complainants had submitted that all domestic remedies had been exhausted and that a complaint had been dismissed by the Court of Criminal Justice in Tacna.

17. The working group had approached the Permanent Representative of the State party in Geneva, who had explained that, when the water supply project in the area had been initiated in 1977, its potential environmental impact had not been taken into account. Recognizing the unfortunate consequences of that shortcoming, the regional Government had conducted a proper environmental impact assessment and had concluded that the communities affected should be compensated. The working group was unaware of the nature of such compensation. The Permanent Representative had further explained that the resident indigenous population held no native title rights to the land in question. The working group had thus far not discussed the situation in the light of the supplementary information provided. She suggested that the State party should be requested to include pertinent information in its next periodic report.

18. Indicating that an individual communication on the matter had been submitted to the Human Rights Committee, the State party had called into question the admissibility of the complaint under the early warning and urgent action procedure, stating that it would disregard any possible measure adopted in that framework.

19. Mr. SCHMIDT (Secretariat) said that the Human Rights Committee had responded consistently to similar arguments advanced by the State party on previous occasions by declaring itself competent to examine individual communications submitted under the Optional Protocol to the International Covenant on Civil and Political Rights, regardless of whether the matter had also been submitted to an International Labour Organization (ILO) procedure, the procedure governed by Economic and Social Council resolution 1503 (XLVIII) or any other special procedures of the former Commission on Human Rights. The Human Rights Committee had held that, given the diverse nature of those mechanisms, their being seized with the matter did not preclude its examination under the Optional Protocol. Similarly, the initiation of an early warning and urgent action procedure should not be precluded by the mere fact that a member of the indigenous community concerned had submitted an individual complaint to the Human Rights Committee. However, the communication would be inadmissible under article 14 of the Convention.

20. Mr. AVTONOMOV said that the State party's assertion that there was no cause for concern stood in stark contrast with NGO reports, which described the situation of indigenous

communities in the area as catastrophic. The question of title over the land in question was irrelevant. Given that the environmental consequences of the water supply project affected the resident indigenous population, the matter clearly fell within the Committee's mandate. Additional information was required to assess the situation properly and decide on the appropriate course of action.

21. Mr. YUTZIS agreed. It should also be borne in mind that the water shortages affected not only indigenous peoples in Peru, but also those living in neighbouring Chile and Bolivia. The matter required urgent attention and no decision on admissibility should be taken before the Committee had received additional information clarifying the situation.

22. Mr. VALENCIA RODRÍGUEZ noted that the water supply problems of the Aymara people of Peru, Bolivia and Chile had existed for over 30 years. He agreed that the Committee needed more information before it could decide whether it should institute an urgent action procedure.

23. Ms. JANUARY-BARDILL reiterated that the Committee should write to the Government of Peru asking for more information in writing, which should include that provided orally by the ambassador of Peru the day before. The Committee would then be in a better position to decide whether the urgent action procedure was justified.

24. Mr. THORNBERRY, Rapporteur, said that the problems of the Aymara people were the result of a long accumulation of events rather than one single event. The Human Rights Committee had substantial jurisprudence on situations arising from such an accumulation of individual events.

25. The CHAIRPERSON said that, if there was no objection, he would take it that the Committee wished to send a letter to the Government of Peru asking for further information, as suggested by Ms. January-Bardill.

26. It was so decided.

27. Mr. SICILIANOS noted that the working group had not had the opportunity to discuss the information presented by the ambassador of Peru the day before. He suggested that, in future, the working group should meet to discuss any case which was about to be submitted to the Committee as a whole, so that its recommendations were as complete and up-to-date as possible. That would save time in the subsequent plenary.

28. The CHAIRPERSON supported that proposal.

29. Mr. ABOUL-NASR asked whether the Committee really needed to approve a letter which merely asked for further information.

30. The CHAIRPERSON said that, since the letter was sent in the Committee's name, it must be discussed and approved by all members in plenary session.

31. Mr. LINDGREN ALVES noted that drafts - of concluding observations, for example - were usually circulated in advance. Members could raise any queries or doubts privately with the author of the draft, which would reduce the amount of discussion required in plenary.

32. The CHAIRPERSON suggested that in future the working group might itself draft letters which merely requested further information. The Committee could then consider and approve the draft, without discussing the case itself at that stage.

Democratic Republic of the Congo

33. Ms. JANUARY-BARDILL informed the Committee that a request for urgent action had been submitted by seven organizations, including one national and one international non-governmental organization. They were concerned about the granting of logging concessions on indigenous peoples' traditional territories, the creation of national parks and the exploitation of the natural resources of indigenous territories, all without consultation with the indigenous peoples concerned. Allegedly, the rights of indigenous peoples were not recognized and no legal instruments existed to protect them. The authors of the request recommended a number of measures, including technical support by OHCHR.

34. The 11th to 14th periodic reports of the Democratic Republic of the Congo, which had been considerably overdue, had been submitted. The working group recommended that the consolidated report should be considered at the next session in March 2007, one session earlier than scheduled. The Committee should write to the State party asking for further information about the issues raised in the request for urgent action. However, it should bear in mind that it was a time of change in the country, since a presidential election had just taken place.

35. The CHAIRPERSON noted that Mr. Schmidt of the Office of the High Commissioner was to visit the Democratic Republic of the Congo the following week, and might learn more about the situation of indigenous peoples on that occasion. He suggested that Ms. January-Bardill should draft a letter along the lines which she had suggested for the Committee's subsequent approval.

36. It was so decided.

United States of America

37. Ms. JANUARY-BARDILL said that the Committee had asked the Government of the United States of America for information about the situation of the Western Shoshone people, who had been the subject of two requests for urgent action. The information had not been received by the date requested, July 2006, and the working group therefore needed to discuss the action which should be taken.

United Kingdom

38. Ms. JANUARY-BARDILL said that the information which the Committee had requested about the situation of Gypsies in the United Kingdom had been received, but that the working group was unlikely to have an opportunity to discuss it before the end of the current session.

39. Many of the cases submitted to the working group had to do with indigenous issues rather than actual racial discrimination. The Committee should perhaps consider whether such cases were best dealt with under the early warning and urgent action procedure.

FOLLOW-UP PROCEDURE (agenda item 7) (continued)

Follow-up on individual communications (continued)

40. Mr. SICILIANOS (Special Rapporteur for follow-up to Opinions) recalled that the Committee had decided to include in its annual report to the sixty-first session of the General Assembly a summary of all the individual cases in which the Committee had found violations of the Convention or had made suggestions or recommendations in cases of non-violation, along with the action subsequently taken by the State party concerned (see the Committee's report to the sixtieth session of the General Assembly, document A/60/18, annex IV).
41. He invited the Committee to consider two documents, which had been distributed informally in English in the meeting room. The first was a draft new chapter of the annual report, giving details of follow-up replies received from States parties up to 16 August 2006. A similar chapter would appear in future annual reports. The second gave details of the nine cases since the Convention's adoption in which the Committee had found a violation of the Convention and the eight cases in which it had found no violation but had made suggestions or recommendations to the State party. It would appear once only, in the Committee's report to the sixty-first session of the General Assembly.
42. The second document was a valuable compilation of the Committee's Opinions on individual communications, which had hitherto been available only in OHCHR archives. The summary showed that States parties' follow-up to the Committee's Opinions had generally been positive and had led to changes in legislation and an increase in public debate. He wished to commend the work of the Secretariat staff member who had helped to produce that summary and similar summaries issued by the Human Rights Committee and the Committee against Torture.
43. The CHAIRPERSON welcomed the summary of the Committee's Opinions, which would help to increase public awareness of the Committee's jurisprudence.
44. Mr. THORNBERRY (Rapporteur) likewise welcomed the summary, which would make the Committee's Opinions much more accessible. It would make the current annual report rather longer, but in future years the increase in length would be negligible.
45. Ms. DAH said that the production of a summary of individual communications by three of the treaty bodies was proof that they could indeed harmonize their working methods. That achievement should help to dispel any lingering doubts about the Committee's proposal for a unified body for the consideration of individual communications.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES IN WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 9) (CERD/C/69/3)

46. Mr. PILLAI drew the Committee's attention to the note by the Secretary-General (CERD/C/69/3) on the agenda item and recalled that since the independence of Timor-Leste,

only 16 Non-Self-Governing Territories remained. He had reviewed the Committee's past practice and had found that, due to the lack of information concerning the situation in those Territories, and in the absence of any petitions, the Committee had generally limited itself to urging the Administering Powers to provide more information on the Territories in their periodic reports and to requesting United Nations agencies to provide the Committee with any information they might deem relevant to the Committee's mandate.

47. He was concerned at the lack of information regarding the Non-Self-Governing Territories and pointed out that some Territories in fact had populations larger than some States parties to the Convention; furthermore, many of those Territories had ethnically diverse populations and might raise issues relating to ethnic and minority groups and possible discrimination that would be of interest to the Committee.

48. The lack of information about or petitions from the Territories could probably be attributed to lack of awareness of the Convention on the part of the populations. He therefore proposed that the Committee should request the Administering Powers and relevant United Nations agencies to take steps to increase awareness of article 15 of the Convention and should reiterate its request that the Administering Powers include information on the situation in the Non-Self-Governing Territories in their periodic reports and adopt measures to increase awareness of article 15 of the Convention, including the right to submit petitions to the Committee.

49. Mr. THORNBERRY said article 15 was perhaps less relevant currently than when the Convention had originally been drafted but, given the universal character of the Convention, agreed that there was to some extent an invisible constituency in the Non-Self-Governing Territories whose situation should be considered by the Committee. The issue of how to increase awareness of the Convention certainly warranted further discussion.

50. The CHAIRPERSON, supported by Mr. AMIR, agreed that the Administering Powers should be urged to include information relating to the Non-Self-Governing Territories in their periodic reports.

51. Mr. KJAERUM agreed with Mr. Thornberry that the Committee should look into ways of increasing awareness of the Convention in the Non-Self-Governing Territories. The Administering Powers should be requested to include information on the Territories in their periodic reports and to include representatives of the Territories in their delegations with a view to encouraging a dialogue between their populations and the Committee.

52. The CHAIRMAN said he took it the Committee wished to adopt the proposals made by Mr. Pillai.

53. It was so decided.

FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 8) (E/CN.4/2004/WG.21/10 and Add.1, E/CN.4/2006/18)

54. Ms. JANUARY-BARDILL drew the attention of the Committee to the report of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action on its fourth session held in Geneva in January 2006 (E/CN.4/2006/18). The Working Group had discussed the issues of racism and the Internet and the need for complementary international standards relating to racial discrimination, with a view to strengthening the Convention and its implementation. It had identified both substantive and procedural gaps and had made recommendations in that regard and on the reporting process.

55. Substantive gaps which had been identified included the fact that the Committee's general recommendations were considered non-binding and that some States made more effective use of the recommendations than others. The Working Group had also identified gaps in the Convention regarding the protection of specific groups, such as religious groups, refugees, asylum-seekers, stateless persons, migrant workers, internally displaced persons, descent-based communities, indigenous peoples, minorities and people under foreign occupation. However, the view had also been expressed that protection of the rights of refugees, asylum-seekers, stateless persons and internally displaced persons did not specifically fall under the mandate of the Convention (para. 76).

56. Consideration had also been given to the identification of additional deficiencies such as multiple or aggravated forms of racial discrimination, ethnic cleansing and genocide, religious intolerance and defamation of religious symbols, racial discrimination in the private sphere, incitement to racial hatred and dissemination of hate speech and xenophobic and caricatural pictures, through traditional media and information technology, including the Internet (para. 77). She noted that use of the Internet to disseminate racist material was rarely reported by States parties, which might reflect a weakness in the instrument.

57. The Working Group had also identified procedural gaps, including the need for the Committee to be able to undertake country visits and the need to formalize the Committee's follow-up to recommendations addressed to States parties in its concluding observations and opinions on individual communications (para. 78). Most participants were of the view that the gaps identified required the adoption of complementary international standards; some stressed, however, that the Committee's general recommendations had interpretative authority and the gaps in the Convention could continue to be addressed through the adoption of general recommendations. It had also been suggested that regional standards could complement international standards or assist in developing new international instruments. There was also discussion of amending the Convention, which would be a difficult process, or adopting an optional protocol to the Convention. Another possibility would be the adoption of new instruments relating to indigenous peoples, human rights education and religious intolerance (paras. 79 to 85). The need for the General Assembly to pay close attention to the annual report of the Committee and to its recommendations and concluding observations had also been highlighted.

58. Finally, she recalled the Committee's 2004 views on complementary standards (E/CN.4/WG.21/10), in particular with regard to articles 3 through 7 of the Convention (paras. 9 to 20). With regard to article 5, the Working Group had also discussed the possibility of an additional international instrument relating to cultural rights; with regard to article 7, it had stressed the need to close the gap between theoretical legal protections and the implementation of those guarantees due to persistent discriminatory attitudes in the population, for example through increased education for tolerance. She underscored that it was important for the Committee to continue to give the Working Group feedback on how to strengthen the Convention and its implementation.

59. Mr. PILLAI said the Working Group had made important recommendations to both the General Assembly and OHCHR (E/CN.4/2006/18, para. 105 f and g). It had also made important recommendations relating to substantive and procedural gaps, including the need for the Committee to be able to undertake country visits and to formalize its procedure for follow-up to recommendations contained in its concluding observations and opinions regarding communications under article 14 of the Convention. It had also recommended further study on measures to strengthen implementation of the Convention through additional recommendations or updating of its monitoring procedures (paras. 106-108). He expressed concern that the Committee would not be meeting before the next session of the Working Group in February 2007 and therefore wondered how it would be able to respond to the Working Group.

60. The CHAIRPERSON stressed the importance of the Working Group's suggestions, in particular the need for the Committee to update its reporting guidelines in order to encourage States parties to report on specific aspects of racial discrimination, such as racism on the Internet (para. 69); the holding of sessions of the Committee in the regions (para. 105 g (ii)); and measures to strengthen implementation of the Convention (para. 108 a). He said the Committee would resume its consideration of the agenda item at its next meeting.

The meeting rose at 1 p.m.