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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fourth session

SUMMARY RECORD OF THE 1626th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 2 March 2004, at 3 p.m.

Chairman: Mr. YUTZIS

CONTENTS

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

Fifteenth, sixteenth and seventeenth periodic reports of the Libyan Arab Jamahiriya

ORGANIZATIONAL AND OTHER MATTERS (continued)

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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 6) (continued)

Fifteenth, sixteenth and seventeenth periodic reports of the Libyan Arab Jamahiriya (CERD/C/431/Add.5; HRI/CORE/1/Add.77)

1. At the invitation of the Chairman, the members of the delegation of the Libyan Arab Jamahiriya took places at the Committee table.
2. Mr. ABUSEIF (Libyan Arab Jamahiriya), introducing the fifteenth, sixteenth and seventeenth periodic reports of the Libyan Arab Jamahiriya, which had been submitted in one document (CERD/C/431/Add.5), said that his Government was committed to the fundamental principle of the equality of all human beings as well as to the principles of the Durban declaration. The report provided information about the legislative and other measures taken to combat discrimination in the Jamahiriya.
3. Mr. PILLAI, Country Rapporteur, said that the report was a significant improvement on the State party's previous periodic report and he was confident that the Committee's suggestions for further improvement would be received in the spirit of constructive dialogue in which they were delivered. The State party had a good record on ratification of international human rights instruments. It had a fast-growing economy and was making efforts to diversify in order to reduce its dependence on petroleum. Sanctions imposed on the country had affected economic development but it was hoped that recent developments heralded a more prosperous future.
4. He doubted whether it was possible for any country to state categorically that there was no racial discrimination of any kind within its jurisdiction (para. 19). The delegation should therefore give careful consideration to the kinds of discrimination that might exist, bearing in mind that the wider definition of discrimination included any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin. The Committee would have liked a reassessment of the position stated by the Libyan delegation when the Committee had considered the Jamahiriya's previous periodic report, to the effect that while there might be isolated individual cases like everywhere else in the world, racism as such was unknown; that blacks constituted half the population of southern Libya, which did not prevent them from constituting with other Libyans a single people with a single language and a single religion, without distinction as to colour; and that there were non-Libyans from sub-Saharan Africa living in the Jamahiriya both legally and illegally (CERD/C/SR.1265, paras. 10 -11). That information was of particular interest to the Committee in the light of the incidents that had taken place in the country in September 2000 and the Government's position with regard to the Berbers.
5. He stressed the need for detailed information on the demographic composition of the population and referred the delegation to the general guidelines regarding the form and contents of reports to be submitted under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.5).

6. He asked whether any of the legislation in force prior to the promulgation of the Great Green Document had been amended in a manner consistent with the principles of that document (para. 26) and whether there were any instances of the Convention having been invoked directly before the courts. He asked for clarification of whether under Libyan legislation the principle of equality before the law applied to all citizens or all individuals (paras. 33-34), since the latter term was more inclusive; he wondered whether the People's Court (para. 41) ensured legal redress for non-citizens or only for Libyan nationals. He also asked for clarification of how the authorities would define a legally proscribed group, organization or association, as referred to in article 206 of the Penal Code (para. 34).

7. He asked for updated information on the government measures referred to in the report of the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance concerning the incidents in the Libyan Arab Jamahiriya in September 2000 (E/CN.4/2001/21 and E/CN.4/2002/24). In particular, he wished to know about the work of the committee that had been set up to look into those events and to study all manifestations of xenophobia, and about the outcome of the case against the persons responsible that had been considered by the People's Court.

8. Further information was required about the way in which the provisions that gave effect to article 5 of the Convention were applied and the extent to which such rights were enjoyed by different sections of the population. He commended the Libyan Arab Jamahiriya on its progressive legislation with respect to the rights of women (paras. 51 and 53-55). He asked what progress had been made with regard to a rule that would allow nationality to be transferred by the mother, irrespective of her husband's nationality, which the Libyan Government had informed the Committee on the Rights of the Child it was considering. He trusted that the provisions relating to the disruption of religious ceremonies applied to all religions, and not just to the State religion (para. 61).

9. He would welcome information from the Government about the way in which it had addressed the concerns and recommendations of the International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations regarding discrimination against foreign workers in relation to employment. He would also welcome information in connection with the reported deaths of African migrants in the Libyan desert or in the Mediterranean Sea while attempting to cross into the Jamahiriya or to pass through it to Europe and about the rules for the return, deportation or expulsion of migrants. He asked whether the People's Court was competent to hear appeals against measures that were prejudicial to the freedom and other basic rights of migrants and whether the victims of the events of September 2000 had been compensated for injuries, loss of the property, or the death of their relatives.

10. He asked whether any specific measures had been taken to follow up on the Committee's recommendation for training of law-enforcement officials and to increase public awareness about the provisions of the Convention. He recalled the recommendation regarding the inclusion of human rights education on the school curricula that had been made by the Committee on the Rights of the Child in its concluding observations. He welcomed the steps that the Libyan Government had taken towards ratifying the amendment to article 8 of the Convention.

11. Mr. VALENCIA RODRIGUEZ said that the picture painted in the report of a homogenous demographic composition was inconsistent with the known existence of other groups such as the Berbers, black Africans and immigrants from other countries. In the Committee's experience, no country was entirely free of racial discrimination.
12. He noted with satisfaction that the Convention had legal force and in the event of contradiction enjoyed precedence over domestic legislation. Although the constitutional and legislative provisions that existed were of great importance for strengthening social cohesion, those provisions also had to be implemented. It was important that the fundamental human rights of illegal immigrants who were subjected to deportation or expulsion were taken into account, and efforts should be made to regularize the situation of undocumented migrants. He would welcome more information about the non-governmental organization (NGO) known as the International Organization for the Elimination of All Forms of Racial Discrimination (para. 30). Although the Convention formed part of Libyan domestic legislation, article 4 could not be applied automatically; the provisions described in paragraphs 33 and 34 of the report were of a general nature, and were therefore insufficient. The Government should consider adopting specific provisions in order to implement fully its obligations under article 4 and with a view to preventing the emergence of racial discrimination in the future, since Libyan society was not immune from the phenomenon.
13. He requested further information about the events of September 2000 as they related to the persecution of the black population. He also requested information about the composition and functions of the People's Court and wished to know details of any relevant cases that had come before it. He also wished to know whether the courts could award compensation and reparation to victims of racial discrimination. He enquired about the situation of foreign workers in the Jamahiriya, what trade union rights and social security benefits such workers enjoyed, and what access their children had to education. More extensive information was required about the implementation of article 7 of the Convention.
14. Mr. de GOUTTES said that Libya should be commended for allowing the international legislation to which it was party to take precedence over domestic legislation. He wished to know more about Libya's ratification process for international treaties and the procedures conducted by the basic people's congresses in that regard. He asked whether the Government intended to make the declaration under article 14 of the Convention concerning complaints made by individuals. Libya had made progress in its efforts to disseminate the text of the Convention among the public and the Government should be commended for its efforts to promote women's rights. He wished to know whether the public had also been given information about the Committee's concluding observations.
15. In the report under consideration, it was stated categorically that there was no racial discrimination of any kind in Libya, as Libyan social values were founded on the teachings of Islam and the Great Green Document on Human Rights in the Age of the Masses. The Committee believed, however, that no society was completely free from racial discrimination. Under article 4 of the Convention, States parties were required to have specific legislation

prohibiting the dissemination of ideas based on racial hatred. The Committee placed great importance on the pedagogical and preventive role played by such legislation and in that regard articles 206 and 207 of the Libyan Penal Code on non-discrimination were too general.

16. The delegation should provide further information on the recourse available to victims of racial discrimination and on the situation of migrant workers in Libya, since the Committee had received reports concerning discrimination, particularly against black African workers. The alternative report on the Berbers of Libya, submitted to the Committee by the NGO Tamazgha, emphasized the importance of the Berber community in Libya. The NGO wanted measures to be taken to recognize Tamazight, the Berber language, as a national language of Libya and to grant the Berber community the right to create organizations and associations for the promotion of Berber language and culture. He wished to know the Libyan Government's opinions in that regard.

17. Mr. BOYD asked what the practical results had been of Libya incorporating the Convention into its domestic legislation. He wondered whether there were any differences between the country's legislative provisions and their actual implementation. He had read with interest that there was no racial discrimination in Libya and he wished to know whether any research had been carried out, upon which the Government could base that statement. He asked whether there were any mechanisms within the national and local government systems for reporting cases of racial discrimination and bias-motivated crimes and how such reports were followed up. He wondered whether measures existed to redress the grievances of citizens and non-citizens regarding racial discrimination.

18. He would be interested to receive more information on the status of the Berber community in Libya, their freedom of language and culture and the extent to which they could freely practise their religion. He wished to know whether there was discrimination against the Berber population, either as a matter of policy or as a matter of practice, and whether they were ever repressed in the exercise of their daily lives.

19. Mr. SICILIANOS said that he supported the statements of Mr. Pillai and Mr. de Gouttes on the positive aspects of Libya's seventeenth periodic report. The report, however, did not provide enough information on the Berber, Touareg and black African populations in Libya. He wished to know the Government's perception of those groups, and the extent to which such communities were integrated into Libyan society. Libya still had no specific legislation on the prohibition of racial discrimination, despite the Committee's previous recommendations to that effect. Libya was not the only country to state that such legislation was unnecessary on the grounds that racial discrimination did not exist within its borders. Such legislation was, however, needed as a preventive as well as a protective measure, particularly in view of the problems related to violence against black Africans in Libya. He wished to know how legal cases pertaining to racial discrimination, such as those mentioned in the 2002 report of the Special Rapporteur on racism (E/CN.4/2002/24) progressed, and to what extent judicial authorities could work effectively, bearing in mind the lack of specific legislation.

20. The report did not contain enough information on racial discrimination in relation to the rights set out in article 5 of the Convention. According to the International Labour Organization (ILO), discriminatory practices were employed within the sphere of labour in Libya, and

problems had arisen in relation to ILO Conventions No. 95 on protection of wages and No. 111 on discrimination in employment and occupation. Further information on the matter should be provided in Libya's next periodic report.

21. Mr. TANG Chengyuan asked how many illegal immigrants there were in Libya, how many of them were deported from the country and how they were treated by the authorities before deportation. Paragraph 11 of the report currently before the Committee stated that all Libyans professed the Islamic faith. He wished to know how many people who professed faiths other than Islam lived in the country, and whether there were any religious requirements for working in the Libyan civil service or legal system. Paragraph 58 of the report stated that inheritance was a right governed by the Islamic Shariah. He wondered whether there were any other constitutional provisions pertaining to inheritance, and whether Shariah inheritance regulations were applied to non-Muslims.

22. Mr. AVTONOMOV said that the delegation should provide further information on immigrants, including their nationality, the average length of time they spent in Libya, whether they aimed to stay in the country permanently, whether they were permitted to establish professional unions and other organizations, and whether there were any noticeable trends among the ethnic groups migrating to Libya for employment purposes. He asked which countries Libya's illegal immigrants tended to come from and under what conditions they were deported.

23. Libya had hosted the International Organization on the Elimination of All Forms of Racial Discrimination, and he wished to know whether the organization still existed, since the work of such NGOs provided assistance to States in combating racial discrimination. He also wished to know the position of the Libyan Government in relation to the country's Berber population.

24. Mr. HERNDL said that he hoped that the Committee's dialogue with the State party would encourage the Government to engage in a re-examination of the entire scope and content of the Convention. The delegation should consider the remarks of the Committee to be advice, not criticism.

25. With reference to paragraph 91, he was pleased to note that the Libyan Arab Jamahiriya had taken the necessary steps to ratify the amendment to article 8, paragraph (vi), of the Convention. He urged the Government also to consider making the declaration under article 14, which would enable individuals or groups to submit complaints to the Committee for violations of the Convention.

26. In its previous concluding observations concerning the Libyan Arab Jamahiriya (CERD/C/304/Add.52), the Committee had recommended that since the State party had not been fully implementing the provisions of article 4 of the Convention and had not provided sufficient information on their practical implementation, it should enact specific legislation to that effect.

27. The fact that the Holy Koran contained many verses that extolled the virtues of tolerance and respect towards non-Muslims (para. 33) had been used by the Government as justification

for not enacting special legislation in compliance with article 4 of the Convention. However, a provision had been made in article 206 of the Penal Code to punish persons who advocated the establishment of a legally proscribed grouping, organization or association (para. 34). That legislation might be regarded as a concrete measure that complied, to a certain extent, with article 4, subparagraphs (a) and (b). It was not clear, however, what was meant by a “legally proscribed group” or how the Government determined its proscription. He enquired whether there was a law on associations or some other legal provision according to which the Government could proscribe organizations that advocated racial discrimination.

28. Regarding the statement that all Libyans professed the Islamic faith (para. 11), he enquired whether it was possible for Libyans to adhere to a religion other than Islam, and whether the statement made in paragraph 59, according to which the State pledged to protect freedom of religious observance, referred to religions other than Islam. The delegation should provide additional details on the manner in which the State party viewed the duty stipulated in the Convention to guarantee religious freedom to everyone under its jurisdiction.

29. Mr. THORNBERRY enquired whether Libya had signed the Convention relating to the Status of Refugees. According to information he had received, there were approximately 30,000 Palestinian refugees and 3,000 Somali refugees currently living in the country. The delegation should verify those figures and indicate what standards and practices were being applied in the treatment of the refugees. He asked whether the Government was cooperating with the Office of the United Nations High Commissioner for Refugees in that regard.

30. Referring to paragraph 25 of the periodic report, he asked which minorities were referred to in principle 16 and what measures were taken to maintain their heritage. He wished to know what mechanisms existed in law and in practice to prevent forced assimilation and what positive rights were granted to minorities. He wondered what was meant by the statement that all nations, peoples and nationalities had a right to live in freedom (para. 25), and he asked what internal relevance it had for Libya.

31. The delegation of the Libyan Arab Jamahiriya withdrew.

The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4) (continued)

Countries subject to review

32. The CHAIRMAN drew attention to two of the States parties that had been scheduled to undergo the Committee’s review procedure: Nigeria and Guyana.

33. Ms. JANUARY-BARDILL, Country Rapporteur for Nigeria, said that Nigeria had requested to extend the deadline for submitting its fourteenth to sixteenth periodic reports until the end of June 2004. She proposed that the Committee should agree to extend the deadline to the end of July, but that if the report had not been received by that time, the Committee should undertake a review of Nigeria in August 2004. Non-governmental organizations (NGOs) had raised a number of issues with regard to Nigeria, relating in particular to Islamic law and to oil activities in certain areas of the country.

34. Mr. ABOUL-NASR said that, considering that Nigeria had recently been experiencing problems, the Committee should accept its request for a six-month postponement. It should clearly indicate that it expected to receive the report by the end of July, but it should not mention that it would examine the country's situation in the absence of its report. Even if the State party submitted its report in July 2004, that would not leave enough time for the processing and translation of the report.

35. Mr. AVTONOMOV said that the Committee had no reason to suspect that the State party would not be able to keep to the deadline it had proposed. The Committee's reply should indicate only that it looked forward to receiving the report by the July deadline. If the State party failed to submit its report, the Committee could decide what action to take during its August session. Even if the Committee did not consider Nigeria's periodic report until March or August 2005, that would still be acceptable.

36. Ms. JANUARY-BARDILL said that it was in the State party's interest for the Committee not to discard the possibility of performing a review in August in the absence of the report. The Committee should comply with its own regulations and the standards it set for itself. The Committee's reply should indicate that it expected the report by the end of July 2004 and would perform the review if it had not received the report by that deadline. That was a very fair proposal.

37. The CHAIRMAN said that he endorsed the proposal made by Ms. JANUARY-BARDILL and took it that a consensus had been reached on the matter.

38. It was so decided.

39. THE CHAIRMAN, Country Rapporteur for Guyana, said that in the case of Guyana it was necessary to draft a new decision, using as a starting point the Committee's decision 2 (62) of 21 March 2003, according to which it had informed the State party that it might discuss information on the state of racial discrimination in Guyana under its early warning and urgent action procedure. The United Nations Special Rapporteur on racism, Mr. Diène, had indicated that the human rights situation in Guyana was precarious, but that the political will existed to return the country to safe ground. Nevertheless, it should be made clear to Guyana that it was required to comply with its obligations under the Convention. In the absence of any indication that positive measures had been taken, the Committee would proceed to consider the situation in Guyana under its urgent action and review procedures. It might also be useful to mention the possibility of a visit to Guyana by a Committee member in order to assist the State party to comply with its obligations under the Convention.

40. Mr. ABOUL-NASR said that the matter could be left to the Chairman to act as he saw fit.

41. Mr. de GOUTTES, supported by Mr. SICILIANOS, agreed that the Committee could rely on the Chairman to draft a new decision based on decision 2 (62) and the comments the Special Rapporteur on racism had made on Guyana at the previous afternoon's meeting, which had provided the Committee with new information on the situation in that State party.

42. The CHAIRMAN said that if there were no objections, he took it that the Committee wished to accept the proposal.

43. It was so decided.

Communications

44. Mr. de GOUTTES said that communication No. 31/2003 against the Slovak Republic was being redrafted. Regarding communication No. 30/2003 against Norway, the secretariat was drafting a proposal concerning the request to the Norwegian Government for additional information. Both texts would be distributed shortly. The document entitled "Summary overview of the jurisprudence of the Human Rights Committee on 'victim' status" would be useful in subsequent discussion of the communication concerning Norway.

45. Regarding communication No. 26/2002, Hagan v. Australia, the Committee should discuss the Australian Government's response, in which it stated that it did not intend to follow the Committee's suggestion regarding the removal of the offensive term appearing on the billboard. The Committee could either take no action, take note of the response, or react, saying that such a response was not in accordance with the spirit of cooperation that the communication procedure in article 14 sought to promote.

Follow-up procedure

46. The CHAIRMAN invited Mr. Sicilianos to introduce the document on follow-up procedure.

47. Mr. SICILIANOS, making it clear that the document represented the Bureau's consensus on that matter and not his own views, said that preliminary discussions with the Committee had led to the conclusion that efficiency and collegiality were essential in the follow-up procedure. Rather than attempting to follow the examples of either the Human Rights Committee or the Committee against Torture, an effort would be made to blend the rules of those two committees.

48. The first paragraph of the document confirmed the solid legal foundation for the follow-up procedure, based on article 9 of the Convention. Paragraph 2 referred to a special rapporteur, who would be responsible not for the follow-up work as such, but rather for coordinating follow-up by acting as an intermediary between the secretariat and the Committee. The special rapporteur would present a short report, either written or verbal, to the Committee concerning the States parties' responses to specific questions. The Committee would then decide on an appropriate reaction to those responses, in order to maintain the spirit of collegiality. At the suggestion of Mr. Herndl, it had been decided that the follow-up procedure should take place in the course of private meetings. A brief factual summary of the follow-up procedure would then be incorporated into the Committee's report to the General Assembly, in line with the example provided by the Human Rights Committee.

49. Questions and requests for additional information to States parties should be specific and realistic and could appear as a separate paragraph within the concluding observations.

50. Mr. SHAHI wondered how early warning measures and urgent action procedures, such as the decision taken by the Committee during the previous session regarding the Lao People's Democratic Republic, would fit in to the follow-up procedure. In that particular case, did the Committee intend to send a letter to the Lao Government, under the Chairman's signature, requesting a reply to the its decision?
51. Mr. SICILIANOS, referring to the titles of the document on follow-up procedure, pointed out that "Article X" indicated the letter X, not the number 10, as the decision regarding the most appropriate section of the rules of procedure in which to incorporate that document had not yet been finalized.
52. While the follow-up procedure described in the document would be particularly relevant to concluding observations, it was hoped that it might be adopted as a general rule. It could be implemented in the case of review procedures, particularly when States parties had not submitted a periodic report. He drew the Committee's attention to the recommendations in paragraph 41 of the document entitled "Consideration of implementation in the absence of a report".
53. Follow-up procedure was also pertinent to early warning measures and urgent action procedures, and in the case of the Lao People's Democratic Republic, for instance, given that the Committee had made recommendations to the State party, the follow-up procedure could be implemented to request additional information from the Lao Government.
54. Mr. PILLAI, as a member of the Bureau, had considered the follow-up procedure and the reporting of communications in the annual report of the Committee to the General Assembly. Comments of States parties on the concluding observations adopted by the Committee had been included in the reports as an annex, with no record of replies from the Committee. He therefore wondered what the status of such communications would be under the follow-up procedure and whether they would fall within the remit of the special rapporteur.
55. Mr. de GOUTTES said that, during the initial discussion on the matter, he had voiced concern about over-burdening the Committee's structures and about giving the full responsibility for the follow-up procedure to a single Committee member, who would then have to face State parties alone. The document drafted by Mr. Sicilianos had, for the most part, responded to those concerns by stating, in paragraph 3, that the decisions on further action would be taken by the Committee as a whole, that the role of the special rapporteur was that of coordinator between sessions, and that the meetings would be closed. Those measures provided for the protection of the special rapporteur. He suggested the possibility of adding a sentence to paragraph 3 stating that any communication between States parties and the Committee would be directed through the Committee or the Chairman, not the special rapporteur.
56. Mr. SICILIANOS, replying to a request for clarification from Mr. ABOUL-NASR concerning the "further actions" mentioned in paragraph 3, gave the example of a session during which nine States parties had been considered. In their concluding recommendations, the Committee had raised two or three points with each State party, to which a response was expected by March 2005. In the hypothetical case that the special rapporteur had received

responses from six State parties, five of which were complete, the “further action” would consist in sending letters to the three States parties that had not replied at all and one letter to the other State party stating that the Committee required additional information. The Committee, not the special rapporteur, would be in charge of deciding what further action was required.

57. Mr. ABOUL-NASR wondered whether it would not be better for the follow-up procedure to be managed by the country rapporteurs, given that they would be the best informed members of the Committee on a particular State.

58. Mr. SICILIANOS replied that the idea had been considered, but it had been decided that while country rapporteurs would have an important role to play in the process, it would be better for just one person to remain in charge of the follow-up procedure. He or she could consolidate all the relevant information and coordinate with the secretariat.

The meeting rose at 6 p.m.