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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-ninth session

SUMMARY RECORD OF THE 1780th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 August 2006, at 3 p.m.

Chairperson: Mr. de GOUTTES

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Review of the implementation of the Convention in States parties for which periodic reports are seriously overdue (*continued*)

Saint Lucia

1. Ms. DAH (Rapporteur on Saint Lucia), pointing out that Saint Lucia had ratified the Convention in 1990 and that its report and core document were overdue by 15 years, said that the Committee had already considered the situation in that State party twice within the framework of the review procedure in its sixty-fourth and sixty-seventh sessions and, in the absence of a response from the Government of Saint Lucia, had decided to consider that question a third time, in the current session.

2. Providing a brief chronology of events, she said that in March 2004, the State party was informed that the Committee's provisional observations regarding it would be published unless it indicated a date for the submission of its report. In a letter dated April 2004, the Head of the Mission of Saint Lucia to the United Nations in New York called the information used by the Committee slanted and false, explaining that his Government had not yet submitted the report to the Committee because of administrative and institutional difficulties and, above all, because there was no racial discrimination in Saint Lucia. At its sixty-fifth session, which took place in August 2004, the Committee decided to publish its provisional observations regarding Saint Lucia (A/59/18, paragraphs 434-458) and informed the State party of that. In August 2005, it sent the Government of Saint Lucia a letter with a list of questions to be discussed, and in the letter, it expressed regret that the Government had not responded and suggested that the Government avail itself of the technical assistance offered by the Office of the United Nations High Commissioner for Human Rights to prepare its report. A response to the letter had yet to be received.

3. In that context, the Committee had no new information whatsoever on Saint Lucia, and, accordingly, the questions that had been a cause for concern and the recommendations that it had formulated in the provisional observations cited above remained relevant, given the lack, in particular, of disaggregated statistical data on the ethnic composition of the population and information on the situation with the Bethechilokono indigenous people, on the absence of information on the status of the Convention in domestic law and on the remedies available to victims of acts of racial discrimination, on the absence among indigenous people of the opportunity to learn Kweyol, and on the presence in school textbooks of racist passages concerning that community.

4. To unblock the situation, she suggested in conclusion that a reminder be sent to the Government of Saint Lucia indicating that, if it felt the information used by the Committee to be in error, it could itself provide information to the Committee, which would welcome that information, particularly since the Committee had long been requesting it. Furthermore, other avenues could be used: the Committee could mobilize regional missions of the United Nations system, specifically the Office of the United Nations High Commissioner for Human Rights, or turn to other parties concerned. The Committee could, for example, request the good offices of the

Permanent Observer of the International Organization of la Francophonie to the United Nations in Geneva, Mr. Bararunyeretse, who was present at the current meeting and wished to offer the Committee his services as an intermediary between the Committee and Saint Lucia.

5. The CHAIRPERSON invited Mr. Bararunyeretse to make a statement.

6. Mr. BARARUNYERETSE (Permanent Observer of the International Organization of la Francophonie) said that the Organization he represented was devoting a great deal of attention to protecting and promoting human rights, and for that reason in particular he was interested in attending the meetings at which the Committee planned to consider the situation in two member States of the Organization — Seychelles and Saint Lucia. Conscious of the fact that those countries were having difficulty fulfilling their obligations under international treaties to which they were a party, to a lesser extent because of a lack of resources than to a lack of political will, he was willing to act as an intermediary between the Committee and countries like Saint Lucia and Seychelles, which had no permanent missions in Geneva.

7. The CHAIRPERSON thanked Mr. Bararunyeretse, saying he (the Chairperson) had taken his suggestion under advisement.

8. After an exchange of opinions in which Ms. PROUVEZ (Secretary of the Committee) and Mr. ABOUL-NASR took part, the Chairperson said that the Committee would likely send the State party a reminder asking it to provide the requested information or would ask the Office of the United Nations High Commissioner for Human Rights in New York, the United Nations Development Programme Regional Office, or Mr. Bararunyeretse to make contact with the State party, with the possibility of all those measures being taken simultaneously.

Namibia (CERD/C/275/Add.1; CERD/C/304/Add.16)

9. At the invitation of the Chairman, the members of the delegation of Namibia took places at the Committee table.

10. Mr. NDJOZE (Namibia) said that after the submission of the seventh periodic report of Namibia (CERD/C/275/Add.1) in 1996, important progress had been made in the country thanks to the efforts that it made to eliminate the effects of past discriminatory laws and practices. In as much detail as possible, the delegation of Namibia intended to describe the measures that were being taken to honor the concluding observations made by the Committee when it considered the seventh periodic report of Namibia (CERD/C/304/Add.16) and answer questions posed in that connection.

11. As for the definition of racial discrimination as a criminally punishable act, recalling that the Committee had wanted to know whether the Constitution of Namibia contained provisions that made it possible to guarantee the implementation of the Convention, he said that paragraph 1 of article 23 of the Constitution stated that racial discrimination and the ideology of apartheid were prohibited and that the law could categorize such practices and their propagation as crimes for which ordinary courts could order whatever punishments the parliament considered necessary (paragraph 16 of the report).

12. The chief national law criminalizing racial discrimination was the 1991 Racial Discrimination Prohibition Amendment Act (paragraph 7 of the report), which

defined a "racial group" as a group consisting of persons that are distinguished by the colour of their skin, race, nationality, or national or ethnic origin. Making numerous references to paragraphs 7-10 of the report, he pointed to the content of the provisions of that act and to the legislative measures that the Government of Namibia had adopted to implement them.

13. In 1996, a judicial decision declared certain provisions of the 1991 Racial Discrimination Prohibition Act to be unconstitutional. As a result, articles 11, 14, and 17 of the 1991 Act were amended by the revised 1998 Racial Discrimination Prohibition Act, which, among other things, introduced punishments that were more severe. In addition, it criminalized affiliation with or support of any organization or movement whose goal was to disseminate ideas based on racial superiority, as well as the creation of such organizations, whereas the previous Act had limited itself to prohibiting organizations that committed acts of violence.

14. As for the need to obtain written authorization of the Prosecutor-General for the initiation of proceedings, he explained that, in its consideration of the preceding report in 1996, the Committee had noted the negligible number of cases involving prosecutions in court based on the Racial Discrimination Prohibition Act and had stated that those individuals might have been deprived of an effective legal remedy, since proceedings could be initiated solely with the written consent of the Prosecutor-General. In actuality, that merely meant that the Prosecutor-General could not delegate his authority in such a case to anyone else. Because of the sensitive nature of cases involving racial discrimination, Namibia felt that the decision to prosecute should be taken at the highest level by local authorities.

15. He said that, if the Prosecutor-General failed to initiate proceedings over racial discrimination, under article 7 of the Criminal Procedure Act, any person directly related to the case, a spouse, child, or close relative of the deceased or, if applicable, the legal guardian could file a complain with a competent court. Thus, Namibian authorities did not feel that that mechanism was an obstacle to prosecution under the Racial Discrimination Prohibition Act. There were cases, however, when complaints of racial discrimination were improperly recorded as complaints of defamation or violence.

16. As for the process for implementing constitutional provisions on the prohibition of discrimination, he said that a lawsuit had been filed against the municipality of Walvis Bay charging that, in distributing land parcels, it had allocated a number of parcels to persons who were disadvantaged because of discriminatory laws and practices. Although the case was still open, the court had suspended the distribution of land parcels. It now needed to decide whether the municipality's policy contravened the provisions of the Constitution pertaining to the prohibition of discrimination and to respect for human dignity.

17. In another case, the High Court stated that not all disparities based on the grounds enumerated in article 10.2 of the Constitution were unconstitutional and that only those that represented unjustified or unfair discrimination against a claimant were unconstitutional. Any discrimination based on grounds not enumerated in the exhaustive list of article 10.2 of the Constitution had to be reviewed in accordance with a provision pertaining to equality before the law and/or article 8.1, which prohibited the abasement of human dignity.

18. As for the adoption of affirmative action under the Constitution, he said that Namibian courts had often considered the connection between Constitutional provisions proclaiming equality before the law and prohibiting discrimination on the grounds enumerated in article 10.2, on the one hand, and provisions that clearly diverged from those Constitutional provisions, on the other.

19. Article 23.2 of the Constitution specified that the parliament could enact legislation that directly or indirectly favoured persons who had been discriminated against socially, economically, or in terms of education by past discriminatory laws and practices. The State was also entitled to implement policies and programmes aimed at redressing social inequality caused by past discriminatory laws. Furthermore, it was entitled to restore balance to the structure of public service, the police force, the defence forces, and the prison service within the context of the implementation of special policies and programmes. In that connection, in 1998, the State adopted the Affirmative Action (Employment) Act, whose specific goal was to promote employment of disadvantaged persons in the government and private sectors. Affirmative-action programmes were being carried out within the framework of plans that employers were obliged to send for approval to the Employment Equity Commission. Reports had to be submitted on how the plans that had been cleared with the Commission were being carried out, and if they were not being carried out, various sanctions could be applied (specifically, legal proceedings could be initiated or a work permit or access to government markets could be denied).

20. After submitting its last report, the Government of Namibia continued its efforts to repeal all the discriminatory laws that were still in effect. The Law Reform and Development Commission had identified an entire array of legal spheres in which provisions drawing criticism needed to be repealed. As for the questions of inheritance and property ownership, Namibia still had a system that consisted of two parallel systems: intestate succession for whites was administered by the Master of the High Court, whereas notice of inheritance for blacks was given by a judge who, in fact, did not handle cases of succession, as a result of which the relatives of someone who had died intestate experienced serious difficulties. The Law Reform and Development Commission had conducted detailed studies of the question, which was extremely complex and could not be resolved merely by introducing a unified system, since different customs had to be taken into account and followed. The High Court had also spoken out on that, saying that the existence of two parallel systems was unconstitutional and that the law needed to be changed. Upon the recommendation of the High Court, the State in 2005 adopted the Estates and Succession Act (amended) No. 15 to resolve the problem.

21. With regard to family law and customary law, he said that the Law Reform and Development Commission had examined the results of general studies of the norms of family law. It identified an urgent need to revise the legal norms on marriage, and, to that end, a special draft was prepared. After lengthy consultations, including with traditional leaders, the Commission in 2004 compiled a report in which it recommended, above all, that marriages contracted on the basis of customary law be recognized as equal to marriages contracted on the basis of Anglo-Saxon law, and that all marriages be recorded. The report contained a draft law on marriages contracted on the basis of the norms of customary law, which was given to the Ministry of Justice for review. Because of a shortage of personnel and budgetary resources, several discriminatory laws that had been inherited from the past and that

should have been repealed under the Constitution were still in force, and the process for repealing outdated laws was not going as quickly as had been hoped. Projects had been developed to obtain funds and to mobilize students to complete the process.

22. As for agrarian reform, the Government had also initiated the process of land redistribution in order to reduce the disparities between the well-off white minority and the black majority, which was barely getting by in overpopulated neighbourhoods. The chosen strategy consisted in buying out farms that belonged to whites and resettling landless black families on them. Thus, since 1991, the Ministry of Lands and Resettlement had acquired 197 farms, on which 1,616 families had been resettled. Under its strategic plan, it intended to acquire an additional 403 farms. In 1998, parliament approved the National Land Policy, which was based on principles espoused in the National Land Conference of 1991, as well as on the provisions of the Constitution. The Agriculture (Commercial) Land Reform Act of 1995 called for the Government acquisition of agricultural lands for land reform purposes and their transfer to Namibian citizens who had been victims of previous discriminatory laws and practices, as well as the creation of a court for land disputes. Lands were acquired via an agreement reached between the buyer and the seller or via expropriation for public purposes, provided that the owners were paid fair compensation.

23. The Communal Land Reform Act was adopted in 2002 for purposes of managing the transfer of rights to communal land, specifically for creating communal land boards and for defining the powers of traditional chiefs and authorities. The national programme for land use, which combined all the elements of policies and laws that were being implemented by the Ministry of Lands and Resettlement, was chiefly geared to defining the rights and obligations of users and owners of communal land, of leaseholders of State or private land parcels, and of people who occupied land parcels in cities without a confirmed right of ownership to the parcels. The programme gave rights to specific categories of farm workers on farms on which they had worked for many years, specifically to those who had been on those lands when the white colonists arrived. The final draft of the programme had been prepared and would very soon be introduced in parliament for consideration.

24. In recent years, the Government had exercised it right to expropriate certain commercial enterprises, which immediately led to complaints by the owners of constitutional violations and discrimination. The Government had hired attorneys to defend the decisions taken, but those decisions were sometimes encountering serious resistance. It was continuing its expropriations, and when there were no complaints, it was negotiating the amounts of the compensations.

25. In responding to the Committee's request for information of greater specificity regarding the access of indigenous residents to the legal assistance programme, he said that, although the administrative authorities were concentrated in the capital, requests for legal assistance could be filed with all national courts of first instance through the court registry. The 1990 Legal Aid Act called for the creation of district-based legal assistance committees to more effectively implement the programme, but no such committees had yet been created. Recently, 13 regions of the country had seen the opening of five regional offices, where legal assistance counsellors who would represent the interests of indigenous residents in district courts worked

on a permanent basis. In rural areas, where there were no courts of first instance, no such offices had been created.

26. With regard to the legal remedies available through the ombudsman in the event of racial discrimination, he said that, under article 25.2 of the Constitution, the ombudsman could, on the basis of the applicant's financial situation, provide assistance or advice, representing the applicant's interests in court or recommending that the applicant file suit himself (see paragraph 23 of the report).

27. As for measures to combat hidden forms of discrimination, he said that, in order to strengthen the unity of the Namibian people, the Committee for Civil Education had been created and had worked for a number of years with UNESCO to develop civil-education visual aids for integrating human-rights education into the school system. The Committee had prepared electronic manuals for instructors, as well as paper manuals for schools without computers. It was supervising several projects within the framework of the human-rights education programme, which encompassed all primary and secondary school students.

28. And finally, with regard to the measures that were being taken to promote the socio-economic development of the San community, he said that the Council of Ministers had adopted a resolution in November 2005 to develop a special programme for the development of the San community called the San Development Programme, whose implementation would be overseen by a special committee working under the prime minister and headed by the deputy prime minister. For many years, the Government had been implementing various programmes for the San community, and now they would be more coordinated and targeted and would have a political status of a higher priority.

29. Ms. JANUARY-BARDILL (Rapporteur on Namibia) said that the last periodic report of Namibia was dated January 1996, i.e., it had been prepared four years after the State party's ratification of the Convention, and that the Committee had received no information since that time. For that reason, she welcomed the presence of the representative of Namibia and the desire shown by the State party to resume a dialogue with the Committee. Although the representative of Namibia had provided a voluminous amount of information, the Rapporteur, in preparing to make a statement, had been forced to use other sources of information, specifically materials from international non-governmental organizations.

30. She noted that the Committee, as before, did not have data in sufficient detail, broken down for the various ethnic groups that constitute the Namibian population. She welcomed the copious data regarding, specifically, the new policy involving the adoption of special measures in the interests of a number of disadvantaged groups and the programme for the development of the San community, citing sources that said that marginal groups continued to live in abject poverty and continued to encounter difficulties exercising their social and economic rights. In remote regions, workers at agricultural enterprises belonging to whites continued to endure severe discrimination. For that reason, the Rapporteur asked Namibia to include in its next periodic report information on legislative, administrative, and other measures that it had adopted to implement article 23.2 of the Constitution, which called for special measures in the interests of disadvantaged groups.

31. As for article 4 of the Convention, the Rapporteur cited information to the effect that Namibian political leaders had made uncomplimentary remarks about

certain communities, and in that connection she welcomed amendments to legislation to categorize the dissemination of racist theories and ideas as criminally punishable.

32. As for article 5 of the Convention, she spoke of the concern that had been expressed to her by a number of non-governmental organizations regarding, in particular, the fact that recognition by the State party of one official language prepared the soil for discriminatory acts against those who did not have a command of English or Afrikaans. With regard to article 6 of the Convention, the Rapporteur pointed to the difficulties that were being encountered by Caprivi communities who turned to the court to have their separatist territorial claims satisfied. Those communities apparently did not receive legal assistance from the State. Overall, it would be beneficial if Namibia provided information of greater detail on measures aimed at combating racial discrimination against disadvantaged groups.

33. The Rapporteur noted that the San community was inadequately represented in State agencies, and in that connection she asked what measures were being taken to ensure the participation of that community in political life.

34. According to some sources, Namibia was doing all it could to host refugees and asylum-seekers under the best conditions possible, while restricting their movements within the country and prohibiting them from working. The Rapporteur suggested that the State party, in its next periodic report, provide the Committee with detailed information on refugees and asylum-seekers and particularly on measures geared to enabling them to exercise the rights enunciated in article 5 of the Convention.

35. She was interested in receiving information on the provisions of customary law that pertained to marriage and divorce and, in that connection, cited information to the effect that some of those provisions discriminated against women who belonged to vulnerable groups.

36. The Rapporteur welcomed the information provided by the representative of Namibia regarding the land reform being conducted by Namibian authorities, noting at the same time that indigenous communities continued to have limited access to land. Very often, those communities, particularly the San and the Damara, had no means of subsistence and were forced to resort to begging. The Rapporteur, fully aware of the problems inherited from apartheid and of the efforts the State party was making to protect the economic and social rights of the populace, nonetheless wished to know what measures Namibia was taking to protect the economic, social, and cultural rights of marginalized groups. Furthermore, she was concerned about the situation with children affected by HIV/AIDS and asked what measures were being taken by the State party to guarantee their access to education.

37. In conclusion, she called upon the Namibian authorities to continue their work aimed at defending and promoting human rights and stopping racial discrimination at the national level. The voluminous amount of information presented at the meeting would be very useful to the State party in preparing its next periodic report. In that regard, she pointed out that Namibia could request the assistance of competent entities of the United Nations, including the United Nations Development Programme office in the country. She called upon the State party to submit a full report to the Committee by 30 June 2007.

38. Mr. PILLAI called the representative of Namibia's attention to two questions that, in his opinion, merited special attention in Namibia's next periodic report. He was interested in knowing, above all, how the special measures called for in article 23.2 of the Constitution were being put into practice, as well as in specific information on the results of land reform.

39. Mr. NDJOZE (Namibia) said that his country would undertake to submit its next periodic report within the period of time prescribed by the Committee, namely, by 30 June 2007. He noted the constructive observations made by the Committee and emphasized that, in the next report, Namibian authorities would endeavor to stress land reform and the special measures being taken in the interests of disadvantaged groups.

40. Although there was still much to be done, Namibia had made substantial progress in improving the living conditions of indigenous communities. As for, specifically, the failure to provide legal assistance to certain communities, he pointed out that, in numerous proceedings, the communities with separatist demands disputed the competence of the courts of the State party, because they did not regard themselves as Namibians. Under such circumstances, it was difficult to provide them with legal assistance.

41. The CHAIRPERSON thanked the representative of Namibia for his clarifications and took note of the obligations he assumed with regard to submission of the State party's next periodic report, which was due by 30 June 2007.

42. The delegation of Namibia withdrew.

The meeting was suspended at 5.15 p.m. and resumed at 5.30 p.m.

43. Mr. SICILIANOS pointed out that, in keeping with the customary practice of the Committee when making its reviews, the members of the Committee were to exchange their views on the progress in the implementation of the Convention in Namibia in a closed meeting. Furthermore, the Namibian delegation had visited the Committee unexpectedly, without having undertaken to submit a periodic report. That was regrettable and could become a dangerous precedent.

44. The CHAIRPERSON, acknowledging that the Committee had departed from customary practice with Namibia, stressed that the State party had come with a rather thoroughgoing document, which could be regarded as the first draft of its next periodic report. Moreover, in that regard, the Chairperson felt that Namibia had clearly committed to submitting a periodic report. It was for that reason that he, as Chairperson of the Committee, had declared that the Committee had noted Namibia's obligation to submit a periodic report by 30 June 2007.

45. Mr. AMIR, understanding the position taken by Mr. Sicilianos relative to the importance of observing Committee procedures, stressed that Namibia had sent a delegation to Geneva in clear response to the Committee's suggestion that it establish a direct dialogue with the Committee. He regarded it as important that Namibia had pledged to submit a periodic report in 2007. If it failed to fulfill that pledge, nothing would prevent the Committee from adopting a draft set of concluding observations on Namibia in which the Committee would be able not only to express its regret that the State party had not fulfilled its commitment to submit a periodic report, but also reproduce its observations formulated orally at the current session by the Country Rapporteur.

46. Mr. SICILIANOS said he would like the Committee to send the Namibian Government a letter with a reminder that, at the current meeting, the delegation had pledged to submit a periodic report to the Committee by 30 June 2007. It would be advisable to attach to that letter a list of questions alluded to by the Rapporteur on Namibia that the State party should take into account when preparing its forthcoming report.

47. Ms. JANUARY-BARDILL shared Mr. Sicilianos's point of view and supported his suggestion.

48. The CHAIRPERSON said that, in keeping with the suggestion of Mr. Sicilianos, the Committee would send the Namibian Government a letter indicating that the Committee had taken note of the statement of the Namibian delegation at the Committee's 1780th meeting and its promise to submit a periodic report no later than 30 June 2007. To facilitate the compilation of the forthcoming report, a list of questions raised in oral dialogue with the delegation would be attached to the letter.

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

Brazil (Question of lands of indigenous peoples in state of Roraima)

49. Ms. JANUARY-BARDILL (Chairperson for the Working Group on Early Warning Measures and Urgent Action Procedures) said that the Working Group has received a communication from a Brazilian organization that represented the interests of 16,000 indigenous residents of the state of Roraima who had been deprived of the right of access to their lands and natural resources. She pointed out that in its concluding observations on Brazil of 12 March 2004, the Committee had recommended that the State party complete the demarcation of indigenous lands by 2007 and adopt urgent measures to recognize and protect, in practice, the right of indigenous peoples to own, develop, control and use their lands, territories and resources (CERD/C/64/CO/2, paragraph 15).

50. She noted that a presidential decree had been adopted on 15 April 2005 that established a deadline of 15 April 2006 for the completion of the demarcation of the lands of the indigenous peoples and the removal of the individuals illegally occupying those lands. Since that decree was not carried out, the Working Group had recommended that the Committee send the State party a letter requesting that it provide an explanation by March 2007 as to why the decree had not been enforced and that it fulfill the obligation assumed by authorities under that decree. Depending on the content of the Brazilian authorities' response, the Committee would have to then decide whether to consider this question within the framework of the review procedure, or within the early warning measures and urgent action procedures.

51. Mr. AMIR was interested in learning whether the Committee had already asked Brazil to provide it information on the situation at hand.

52. Mr. AVTONOMOV, as a member of the Working Group on Early Warning Measures and Urgent Action Procedures, explained that Brazil had already communicated to the Committee that it would respond affirmatively to any request for additional information on the matter. The problem was that the President of Brazil had issued a decree establishing the maximum amount of time for the

completion of the demarcation of the indigenous land and for removing the individuals who were illegally occupying the land, but the decree had not been enforced. Because of that, the Committee had grounds to ask for the reasons that the decree had not been carried out and to request information on the possible obstacles to its enforcement.

53. The CHAIRPERSON said that the Committee would send the President of Brazil a letter requesting an explanation of why the presidential decree of 15 April 2005 has not be carried out.

The meeting rose at 6.05 p.m.