

SUMMARY RECORD OF THE 370th MEETING

held on Friday, 24 March 1978, at 10.45 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued):

(1) FOURTH PERIODIC REPORTS OF STATES PARTIES DUE IN 1977 (continued)
Finland (CERD/C/21) (concluded)

1. Mr. NETTEL said that the Finnish institutions concerned with the treatment of the gipsies could well serve as an example to other countries with gipsy minorities. It would be useful to see the documentation covering cases of racial discrimination that had been brought before the courts. Cases where there had been no convictions would be just as interesting as those where there had been convictions, if not more so.
2. Mr. BRIN MARTINEZ noted that the Finnish Government was fulfilling its obligations with regard to Security Council decisions on sanctions against Southern Rhodesia, but asked why it was maintaining a chargé d'affaires in Pretoria. That was somewhat incompatible with the spirit of the Convention.
3. Mr. PARTSCH said he had noted the statement that the gipsies were opposing the publication of an "abc-book" of their language. He hoped that the Committee would encourage the Finnish Government to proceed with that project; the motive for the gipsies' opposition, as stated in the report, was not a legitimate one.
4. Mr. NASINOVSKY said that, like previous reports from the Government of Finland, the fourth periodic report was informative and answered the questions that had been raised by the Committee. However, in his view, the two paragraphs dealing with the implementation of article 7 of the Convention should be expanded. He knew that Finland was doing a great deal in the educational field to fulfil its obligations and would like to see details included in a future report. More information was also required on the measures Finland had taken to combat racial

/...

discrimination and apartheid in southern Africa. It could well serve as a model for other countries. With regard to Finland's motive for not prohibiting economic and trade relations between private companies in Finland and South Africa, he did not see how the implementation of measures based on General Assembly decisions could be considered unlawful, even if there was no mandatory decision of the Security Council.

5. Mr. VALTASAARI (Finland) acknowledged that the two paragraphs dealing with the implementation of article 7 were somewhat brief, and said that the next report would certainly contain more information in that respect. Teaching on the necessity of respecting human rights and of the elimination of racial discrimination was an integral part of the ethical development of youth in Finland. That education was subject to constant review in connexion with the comprehensive school reform which was currently being carried out in Finland. Concepts such as the protection of human rights and the elimination of racial discrimination inspired all the directives of the Board of Education.

6. With regard to the three court cases, the first was reported in detail in the first report of Finland. Details of the two others could be submitted in writing in connexion with the fifth periodic report.

7. Finland maintained a chargé d'affaires in South Africa mainly because there were Finns living there. However, it did not use diplomatic recognition as a political means of expressing its opinion of a particular government, because it recognized States, not Governments. Its diplomatic representation in South Africa was small and at the lowest possible level. Finland had consistently expressed its views about the policies of the South African Government. For instance, it was a party to the recommendations of the Nordic Ministers for Foreign Affairs and a regular contributor to the various United Nations funds for southern Africa. With regard to the implementation of the General Assembly recommendations on economic and trade relations, it was very clear that legal action would have to be based on mandatory decisions of the Security Council. Other action must take the form of recommendations. The recommendations of the Nordic Foreign Ministers referred to above were examples of such action.

8. He agreed that the wording of the fourth report concerning the grounds on which the gipsies were rejecting the publication of the abc-book sounded somewhat conspiratorial. He did not wish to elaborate on the reasons why the gipsies did not favour the publication of the abc-book. The obvious reason, however, was that they regarded their language as a vehicle for maintaining their separate cultural identity.

9. The CHAIRMAN asked the representative of Finland to convey the Committee's appreciation to his Government for the information it had provided.
10. Mr. Valtasaari withdrew.

(j) SECOND PERIODIC REPORTS OF STATES PARTIES DUE IN 1977
Botswana (CERD/C/R.97/Add.2)

11. At the invitation of the Chairman, Mr. Motsepe (Botswana) took a place at the Committee table.
12. Mr. MOTSEPE (Botswana) said that his Government's report was not as detailed as it ought to have been but that was not an indication of lack of interest. On the contrary, the mere fact of Botswana's proximity to régimes where racism was institutionalized gave it an even greater impetus to combat racial discrimination. As the report stated, racial discrimination was an offence punishable by law, and individuals subjected to such discrimination could seek redress from the courts. The Constitution protected the fundamental rights and freedoms of the individual and was scrupulously implemented by the Government. The principles followed by the Government and people of Botswana fully coincided with those set forth in the Convention. Since independence, Botswana had been committed to building a non-racial society based on equality and respect for human rights.
13. Mr. VALENCIA RODRIGUEZ thanked the representative of Botswana for the additional information he had given, but said he regretted that the second periodic report did not contain the information the Committee had requested when considering the initial report. The only new piece of information was that there had been about 15 court cases annually. He would like more details of the perpetrators and victims of the offences, and the penalties that had been imposed. Like the initial report, the second report failed to give any information on the implementation of articles 5 and 6 of the Convention. However, he appreciated that Botswana, because of its geographical situation, was well acquainted with the evils of racial discrimination as practised by the racist régimes of southern Africa, and he applauded the great effort it was making to combat such discrimination.
14. Mr. GOUNDIAM said he fully appreciated the situation of Botswana, which was very much like that already described by the representative of Lesotho.
15. It was his understanding that the European Convention for the Protection of Human Rights and Fundamental Freedoms had been extended to British colonies, and he wondered whether any legislation to implement the Convention had been enacted prior to independence and, if so, whether it had been integrated into post-independence

law or had been abrogated. He too would like more details of the 15 cases of racial discrimination successfully brought before the courts, to see whether they were between members of different tribes. It would also be helpful to have details of the demographic composition of Botswana in the next report.

16. Mr. VIDE LA ESCALADA said that a distinction must be made between substantive and formal obligations under the Convention. Where the substance was concerned, Botswana had obviously denounced racial discrimination in all its forms, was combating it and had brought cases to trial under its Penal Code, which made racial discrimination a punishable offence. He agreed with the preceding speakers that more information was required on those cases.

17. Mr. DECHEZELLES said that, since Botswana, like Lesotho and Swaziland, was in a way economically a hostage of South Africa, one could hardly apply the same yardstick as in other cases or criticize it for its trade relations with its powerful South African neighbour, on which its very survival depended. Botswana had a parliamentary system, and he understood that steps had been taken to ensure equitable distribution of seats among the representatives of various ethnic groups. He would like more information on that.

18. Mr. MOTSEPE (Botswana) said that he would certainly transmit the Committee's comments to his Government and request the inclusion of further information in the third periodic report.

19. The persons who had been prosecuted for racial discrimination were not Botswana nationals, but nationals of the neighbouring countries under racist régimes. Botswana was regrettably forced to maintain trade relations with South Africa and, inevitably, South African businessmen and others visited the country, bringing their racial prejudices with them. Botswana was making every effort to reduce its dependence on South Africa and to look north towards black Africa and the rest of the world. It had a short frontier with Zambia which could provide an outlet but, owing to the proximity of the Southern Rhodesian border and the acute tension created by the armed confrontations in the area, it was difficult to take full advantage of it.

20. Although there were 10 principal tribes with their own local chiefs, the population of Botswana was more or less homogeneous. On accession to independence it had been necessary to strike a balance between the new political system and the country's authentic tribal traditions. For that reason, a House of Chiefs had been set up as an addition to the National Assembly, and any legislation which

dealt with traditional customs and practices had to be submitted to the chiefs for their consideration. It was true that some parliamentary seats were reserved for specific groups, but elections took place on the basis of universal suffrage, not ethnic origin.

21. With regard to article 5 of the Convention, Botswana was attempting to improve social justice by implementing a policy of equality between the urban and rural populations. Most of the population lived in the rural areas, and the Government was launching projects to halt the rural exodus and to give people in the countryside access to the full benefits of independence.

22. The CHAIRMAN asked the representative of Botswana to convey the Committee's thanks to his Government for its continued co-operation.

23. Mr. Motsepe withdrew.

(i) INITIAL REPORTS OF STATES PARTIES DUE IN 1977

Zaire (CERD/C/25)

24. At the invitation of the Chairman, Mr. Buketi (Zaire) took a place at the Committee table.

25. Mr. BUKETI (Zaire) said that the Mouvement Populaire de la Révolution (MPR) had been created in 1967 to rally all sectors of the population round a single leader, to create the conditions for harmonious development, to restore the authority and international prestige of the State and to preserve authentic cultural values. The principles of individual freedom and fundamental human rights were embodied in the amended Constitution of 1974 and the Manifesto of the N'Sele.

26. Although Zaire was a secular State, all individuals had the freedom to practise the religion of their choice, and national, denominational and private schools existed side by side. The Government also subsidized the social work of the churches.

27. In the cultural field, the Government promoted cultural development and awarded honours to works of merit.

28. Zairian nationality could be acquired, on the attainment of majority, by persons born in Zaire or having one parent of Zairian nationality. Nationals of neighbouring countries could apply for Zairian nationality after five years' residence in the country; for nationals of other countries, the required period of residence was much longer.

29. Since independence, there had been no incidents of racism. The Government had promulgated a law to combat tribalism, regionalism and racism, any violation of which rendered the offender liable to a term of up to 10 years' imprisonment. Under that law, government ministers were prohibited from employing individuals from their own region as members of their senior staff (cabinet). The purpose of that legislation was to promote national feeling and to eliminate tribalism.

30. All Zairians were equal before the law, and members of the judiciary were irremovable and independent.

31. In the social field, the National Social Security Institute and the National Labour Union of Zaire were the bodies responsible for ensuring the social welfare of the population and protecting its social interests.

32. Since accession to independence, a special effort had been made with regard to the emancipation of women, who now participated in all aspects of political and social life in Zaire.

33. Mr. VALENCIA RODRIGUEZ said that the initial report of Zaire was somewhat general in nature. In preparing its second periodic report, the Government might take account of the guidelines drawn up by the Committee.

34. Although the report indicated that, under article 10 of the Constitution, all acts of racial, ethnic and religious discrimination were prohibited, no mention was made of the penalties that might be imposed on those guilty of such acts, or of the court competent to deal with such cases. Further information was needed to enable the Committee to assess the extent to which the Zairian Government was complying with its obligation under articles 4 and 6 of the Convention. More information was also needed on specific provisions in the Constitution relating to the Government's obligations under article 5 of the Convention. He noted in that connexion that the provisions of articles 12 and 21 of the Constitution related to article 5 of the Convention rather than article 7, as stated in the report, and said that it would be helpful to have further information in the second periodic report on measures taken by the Government to implement the provisions of article 7.

/...

35. Mr. NABAVI felt that the provisions of article 10 of the amended Constitution of 1974 did not fully meet the obligations of the Government of Zaire under article 2 of the Convention. Further information was needed on the penalties for acts of racial discrimination.

36. With regard to the implementation of article 4 of the Convention, it would be useful to have further information on the reasons for the complete abolition of the political parties, as referred to in the report. Furthermore, he noted that no mention was made of constitutional provisions covering article 4 (b) and (c) of the Convention.

37. Article 5 of the Convention seemed fairly well covered by the provisions of the Constitution. However, he agreed with Mr. Valencia Rodriguez that articles 12 and 21 of the Constitution related to article 5 and that further information was needed on constitutional provisions relating to article 7.

38. Finally, he noted that the report made no reference to provisions designed to implement article 6 of the Convention.

39. Mr. TENEKIDES noted the efforts made by the Government of Zaire to achieve national unity, especially through the formation of the Mouvement Populaire de la Révolution as a single political movement. He wondered whether all tribes were represented in MPR and whether individuals who did not belong to it were entitled to enter the civil service, the judiciary and other areas of public life.

40. Mr. HOLLIST, referring to the observations made by Mr. Tenekides, said that, although many African countries were made up of different ethnic groups, discrimination in such countries took the form of nepotism rather than denial of the right of individuals to enter public life.

41. He agreed with previous speakers that the report of the Government of Zaire did not entirely satisfy the requirements of the Convention. The attention of the Government might be drawn to the guidelines prepared by the Committee to help States in preparing their periodic reports.

42. He noted that articles 12 and 21 of the Constitution referred specifically to Zairians, and he wondered whether the Constitution provided any guarantee of the fundamental rights of aliens residing in Zaire. It would be particularly interesting to have information on the property rights of resident aliens. He noted that the report made no mention of the procedure for seeking redress against acts

/...

of racial discrimination or of positive measures by the Government to implement the provisions of articles 4 and 7 of the Convention. Further information was needed on those points.

43. Mr. DEVETAK associated himself with the views expressed by previous speakers. He noted that the text of article 12 of the Constitution quoted on page 3 of the report was different from article 12 quoted on page 4 regarding the prescription of ethnic origin as a possible source of discrimination in education. He requested a clarification. It would also be useful to have further information on the treatment afforded to the four main language groups in education, administration and other areas of public life.

44. Mr. DAYAL welcomed Zaire's accession to the Convention, and said that its initial report contained useful information and followed the guidelines which the Committee had laid down.

45. With regard to the abolition of political parties in an effort to combat tribalism, he observed that a diversity of peoples and languages was to be expected in a country as large as Zaire. Tribal society had many commendable features which enriched cultural life; it was only when tribalism became a form of exclusiveness and discrimination that it constituted an evil.

46. He wondered whether the fundamental freedoms referred to in the Manifesto of the N'Sele extended to the expression or publication in the press of diverse political views.

47. Mr. GOUNDIAM noted that Zaire had given shelter to many thousands of refugees from neighbouring countries, and wondered whether foreigners in Zaire enjoyed equal rights and effective protection and remedies in accordance with article 6 of the Convention. He would also like to know what was the situation with regard to nationality in the case of a Zairian married to a national of another country, and whether the children of such marriages automatically acquired Zairian nationality.

48. Mr. PARTSCH observed that the use of the word "regional" in article 10 of the Constitution restricted the scope of article 4 of the Convention, under which States parties condemned all racially discriminatory propaganda. Furthermore, the

/...

section of the report relating to article 5 of the Convention did not mention any restrictions on the fundamental rights and duties of the citizen safeguarded in articles 12, 15, 19, 20 and 21 of the Constitution; yet there must be some restriction of freedom of speech, for instance, since only one political party was permitted.

49. Mr. BRIN MARTINEZ wondered whether a policy of combating tribalism was compatible with the existence of various ethnic groups and languages in Zaire and how tribal groups succeeded in maintaining their traditions.

50. Mr. VIDELA ESCALADA said that, like previous speakers, he wished to see more information on the rights of foreigners in Zaire. He also wondered whether tribalism was entirely negative, or whether it had positive aspects conducive to integration. Lastly, he asked whether article 10 of the Constitution had been supplemented by legislation penalizing violations of its provisions.

51. The CHAIRMAN, speaking in his personal capacity, said that he did not share the view, reflected in the report of Zaire, that tribalism could be equated with racial discrimination. Zairians were of the same racial stock, and the problem of welding peoples into a single nation faced by many African countries was not within the purview of the Convention. Information on the methods used to forge a national identity, which was what MPR was trying to do, should not have been included in the report.

52. Mr. BUKETI (Zaire), replying to the questions raised by members of the Committee, said that the abolition of political parties other than MPR had not restricted freedom of expression. His country had had its own political, social and cultural organizations before the arrival of the colonialists. The United Nations had intervened in his country because the demands of the political parties had threatened to lead to its Balkanization. Two political parties had been authorized under the Constitution of 1967, but MPR had become the sole political party following its institutionalization in 1970 because it provided a focal point for the ideals of all Zairians.

He agreed that tribalism could not be entirely equated with racial discrimination; nevertheless, in the early days of the country's independence,

/...

tribalism had included an element of racism. He agreed that tribalism tended to promote nepotism in the civil service and led to favouritism in the granting of benefits. While Zaire was opposed to tribalism, it accepted the existence of tribes; while it was opposed to regionalism, it accepted the existence of regions.

54. On the question whether article 10 of the Constitution restricted the scope of article 4 of the Convention, he pointed out that all acts of racism, ethnic and religious discrimination were prohibited; the reference to regional propaganda was simply an addition to that prohibition.

55. With regard to the particular sanctions imposed under the Penal Code for violation of the Convention, he said that further information would be given in the second report.

56. Foreigners enjoyed the same rights as Zairian nationals, but it was, of course, necessary at times to take certain measures such as the nationalization of foreign property or the expulsion of undesirable aliens for engaging in activities incompatible with the national interest. Any foreign national who married a Zairian had the choice of retaining his nationality or becoming a Zairian; dual nationality was not permitted. Violations of the rights of foreigners were dealt with by the Zairian courts; if no settlement was reached, efforts to arrive at one were made bilaterally with the country concerned. Foreigners had access to government service in the context of technical assistance.

57. The two "versions" of article 12 of the Constitution quoted in the report were actually separate parts of that article and were not mutually incompatible.

58. He realized that it was difficult for Western democracies to understand the political organization of African countries, since there was a difference in mentality. Under the traditional tribal system, Africans accepted the supremacy of their individual chiefs. There was no such institution as "leader of the opposition". Action was taken through the will of the majority, arrived at by consensus, with a view to ensuring that all members of the community lived in harmony.

59. Under new legal provisions Zaire had begun the process of liberalizing the political system, which was enhancing the country's status in international forums.

60. In conclusion, he agreed that the initial report was somewhat incomplete, and gave his assurance that every effort would be made to ensure that the second report would be much more comprehensive.

/...

61. The CHAIRMAN asked the representative of Zaire to convey to his Government the Committee's thanks for its co-operation.

62. Mr. Buketi withdrew.

(p) FOURTH PERIODIC REPORTS OF STATES PARTIES DUE IN 1978

Morocco (CERD/C/18/Add.1)

63. At the invitation of the Chairman, Mr. Zaimi (Morocco) took a place at the Committee table.

64. Mr. ZAIMI (Morocco) said that, as indicated in the first paragraph of his country's fourth report, it was intended as a reply to the question whether legislative or other measures had been adopted to give effect to the provisions of the Convention. The need for that was not felt, in fact, because by virtue of the Constitution of the Kingdom, priority was accorded to international legislation over internal legislation. Thus, the Convention had the force of internal law. For this move, the provisions of the Penal Code on the rights of citizens and on disturbance of public order could serve to sanction eventually any act that was incompatible with the provisions of the Convention.

65. Mr. NABAVI said that the fourth report of Morocco contained no new element to justify a discussion in the Committee. The third report had indicated that the Convention was an integral part of Moroccan domestic law, and that the Government therefore felt that it was not obliged to promulgate the Convention. In his view, the fact that the Constitution recognized the primacy of international law over domestic law was not a sufficient reason for failing to extend the effect of the Convention by specific domestic legislation. Article 31 of the Constitution had already been brought to the attention of the Committee at the time when the third report had been considered.

66. He also wished to know, since no measure had so far been adopted to give effect to the provisions of the Convention and since no case of racial discrimination had ever been recorded in Moroccan judicial practice, what decision the courts would take in a particular case.

67. Mr. VALENCIA RODRIGUEZ said he was sure that the report was correct in stating that racial discrimination was unknown in Morocco because it was contrary to the teachings of Islam. He noted from the report that the Convention

/...

automatically became part of Moroccan domestic law and acquired legal force, which obviated the need to enact specific domestic legislation. He did wonder, however, in what legal form penalties would be imposed, perhaps under the Penal Code, for violation of the Convention.

68. Violations of the provisions of article 4 of the Convention, relating to racist organizations, would apparently be punishable under the sections of the Penal Code concerning public order. It could therefore be concluded, at least in principle, that the obligation arising from article 4 of the Convention was at least partially satisfied. He hoped that the representative of Morocco would be able to clarify that point.

69. Mr. ZAIMI (Morocco), replying to the questions raised by Mr. Nabavi and Mr. Valencia Rodriguez, said that the courts would use as a basis for their decision the sections of the Penal Code referred to in the last paragraph of the report. Since Morocco had become a party to the Convention, any act violating the rights of citizens, if based on racial discrimination, would be dealt with under the laws governing the rights of citizens. He assured the Committee that, in its next report, his Government would try to respond to all the points that had been raised.

70. The CHAIRMAN asked the representative of Morocco to convey to his Government the Committee's thanks for its co-operation. The Committee expected the Moroccan Government to reply to the various questions raised.

71. Mr. Zaimi withdrew.

72. Mr. TENEKIDES asked whether Governments should not be requested to have their reports introduced in the Committee by representatives who were qualified jurists and would be able to supplement the information supplied and answer questions in a satisfactory manner. He appreciated that the matter was a delicate one, but it was very important for the proper discharge of the Committee's work.

73. The CHAIRMAN said that the matter was indeed delicate, and suggested that the Committee should take it up at another time.

The meeting rose at 1.35 p.m.