

INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION



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COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION
Twenty-eighth session

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Fifth periodic reports of States parties due in 1982

Addendum

TRINIDAD AND TOBAGO 1/

[9 March 1983]

1. Since its fourth periodic report Trinidad and Tobago has continued to adhere and give effect to the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination.
2. Arising out of the fourth periodic report a number of questions were raised and certain issues were highlighted. The Government of Trinidad and Tobago is pleased in this fifth periodic report, to avail itself of the opportunity to clarify the situation respecting those issues.
3. It did not appear clear whether a recommendation of the Ombudsman would be a "lawful requirement" so that anyone failing to carry it out would be exposed to criminal sanction.
4. Section 95(2) of the Constitution of Trinidad and Tobago provides:

"(2) Upon the completion of an investigation the Ombudsman shall inform the department of Government or the authority concerned of the results of the investigation and, if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, he shall inform

1/ The fifth periodic report of Trinidad and Tobago was due on 4 November 1982. For previous reports submitted by the Government of Trinidad and Tobago and the summary records of meetings of the Committee at which such reports were considered, see:

- (1) Initial report - CERD/C/R.63/Add.6 (CERD/C/SR.254-255);
- (2) Second periodic report - CERD/C/29 and Corr.1 and Add.1 (CERD/C/SR.393);
- (3) Third periodic report - CERD/C/17/Add.3 (CERD/C/SR.463);
- (4) Fourth periodic report - CERD/C/64/Add.3 (CERD/C/SR.538).

the department of Government or the authority of the reasons for his opinion and make such recommendation as he thinks fit. The Ombudsman may in his original recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied".

5. Further, section 96(4) provides:

"(4) Where the matter is in the opinion of the Ombudsman of sufficient public importance or where the Ombudsman has made a recommendation under subsection (2) and within the time specified by him no sufficient action has been taken to remedy the injustice, then, subject to such provision as may be made by Parliament, the Ombudsman shall lay a special report on the case before Parliament".

6. What emerges is that failure of a Government department or authority to carry out a recommendation of the Ombudsman does not lead to criminal sanction. However, should the department or authority disregard a recommendation of the Ombudsman made under subsection (2) the Ombudsman is under a duty to lay a special report on the case before Parliament.

7. Arising out of such special report, disciplinary action may be taken against the officials whose duty it was to carry out the recommendations of the Ombudsman in the first place. Such a failure on the part of an official may amount to misconduct for which the following disciplinary measures are available under regulation 110 of the Public Service Commission Regulations:

- (a) dismissal, that is termination of appointment;
- (b) reduction in rank, that is, removal to another grade with an immediate reduction in salary;
- (c) reduction of remuneration, that is, an immediate adjustment of remuneration to a lower point on the scale of remuneration attached to the particular office;
- (d) deferment of increment, that is, a postponement of the date on which the next increment is due, with corresponding postponement in subsequent years;
- (e) stoppage of increment, that is, no payment for a specified period of an increment otherwise due;
- (f) reprimand;
- (g) fine.

8. It is the threat of disciplinary action, rather than criminal sanction, which is relied on as a means of securing compliance with the recommendations of the Ombudsman. It is interesting to note that during the period covered by this report no report of racial discrimination was received by the Ombudsman.

9. The question was raised whether condemnation of apartheid would become part of the public order only if it were enacted in legislation. As a part of the policy of the Government of Trinidad and Tobago apartheid is condemned and certain measures have been taken by the Government, pursuant to its powers and responsibilities for the good government of the State, to demonstrate in a tangible way, the opposition of Trinidad and Tobago to apartheid. An example of such measures is found in Government Notice No.140 of 1967 which instituted a total ban on trading with the racist regime

in South Africa. However, should it be required to make apartheid a punishable criminal offence this could only be done by way of legislation, since the Constitution guarantees "the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law". Due process of law would require that there be in existence some law, either enacted by Parliament or existing as part of the common law with the breach of which an offender can be charged.

10. The question was raised whether there are any pre-existing laws which are in conflict with the Constitution and are still valid. Section 6 of the Constitution provides:

"6 (1) Nothing in sections 4 and 5 shall invalidate -

(a) an existing law,

(b) an enactment that repeals and re-enacts an existing law without alteration; or

(c) an enactment that alters an existing law but does not derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right.

(2) Where an enactment repeals and re-enacts with modifications an existing law and is held to derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not derogate from that right then, subject to sections 13 and 54, the provisions of the existing law shall be substituted for such of the provisions of the enactment as are held to derogate from the fundamental right in a manner in which or to an extent which the existing law did not previously derogate from that right.

(3) In this section -

'alters' in relation to an existing law, includes repealing that law and re-enacting it with modifications or making different provisions in place of it or modifying it;

'existing law' means a law that had effect as part of the law of Trinidad and Tobago immediately before the commencement of this Constitution, and includes any enactment referred to in subsection (1);

'right' includes freedom".

11. It should be noted that the preservation of an existing law against invalidity is limited only to the operation of sections 4 and 5. Nothing in sections 4 and 5 would have the effect of invalidating an existing law. However, an existing law which does not touch the subject matter of sections 4 and 5 may yet be invalid by reason of its inconsistency with section 2 of the Constitution which provides:

"2. This Constitution is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with the Constitution is void to the extent of the inconsistency".

12. With respect to the Committee's request for information on proposed further steps for the fulfillment of Trinidad and Tobago's obligations under article 4 of the Convention, there has been no change in this regard. The Parliament has before it a full schedule of legislative instruments which urgently demanded parliamentary time. The fact that it has so far not been possible to enact legislation pursuant to article 4 of the Convention should in no way be interpreted as intended disregard of Trinidad and Tobago's obligations under this article.

13. As to the question raised as to whether legal aid would be available to a person against whom racial discrimination has been practiced the answer is found in the Legal Aid and Advice Act, Chapter 7:07, which is an Act "to make legal aid and advice in Trinidad and Tobago readily available for persons of small or moderate means, to enable the cost of legal aid or advice granted to persons to be defrayed wholly or partly out of moneys provided by Parliament, and for purposes connected therewith."

14. The scope of the Act extends to legal aid as well as legal advice. A person against whom racial discrimination is practiced, therefore, may, if he is of small or modest means, obtain legal aid or advice. Because legal advice may be of great importance to such a person the provisions of section 37 of the Legal Aid and Advice Act is set out below:

- "37 (1) Subject to this Part legal advice shall be available to persons resident in Trinidad and Tobago for a period of at least six months.
- (2) Legal advice shall consist of oral advice on legal questions given by the Director or a barrister or solicitor whose name is on the appropriate panel of barristers or solicitors maintained pursuant to section 4 and shall include help in preparing an application for legal aid and in supplying information required in determining the disposable capital and disposal income of the applicant but shall not include any advice on any law other than the law of Trinidad and Tobago.
- (3) Provision may be made by regulations under this Act for further defining or restricting the questions on which legal advice may be given and for regulating all matters relating to fees, charges and costs in relation to the giving of legal advice.
- (4) A person seeking legal advice shall apply to the Director and shall be required -
- (a) to satisfy the Director that he cannot afford to obtain it in the ordinary way; and
- (b) to pay to the Director a fee of one dollar or such other fee as may be prescribed."

15. Trinidad and Tobago has continued, during the period covered by this report, to take active steps through the Ministry of Education and Culture, the Ministry of Community Development, the Ministry of Information, the news media and other similar institutions towards the elimination of all forms of racial discrimination.