

391st meeting

Thursday, 27 July 1978
at 3.25 p.m.

In the absence of the Chairman, Mr. Partsch took the Chair.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 2) (continued)

Argentina: Fifth periodic report due in 1978 (CERD/C/20/Add.7) (concluded)

1. Mr. GOUNDIAM expressed surprise at the anachronistic character of article 15 of the Constitution of the Argentine Republic, which read: "In the Argentine Nation there are no slaves; the few that exist ...". He thought that the first part of that text was justified but the second was completely superfluous and unsuitable. In the second paragraph of section 16 of the report it was indicated that Argentina had signed the International Convention on the Suppression and Punishment of the Crime of Apartheid. He asked whether Argentina had ratified that Convention, since it was his understanding that international instruments, on being ratified, became as authoritative as, if not more so than, local laws. Article 80 of the Argentine Criminal Code, cited in the report, provided for the imposition of a penalty of life imprisonment in the case of anyone who killed for reasons of racial or religious hatred. The Argentine Criminal Code seemed to provide only for the case of homicide and did not include acts of violence or incitement to such acts against a group of persons, as stipulated in article 4 of the Convention. Perhaps the Argentine Government should modify its Criminal Code accordingly.
2. Mr. DEVETAK said he wished to refer first of all to the expression "aboriginal or indigenous persons" used in section 12 of the report with reference to the various ethnic groups living in Argentina. In his opinion, the expression "aboriginal or indigenous persons" seemed to proclaim that the group to which it was applied was considered inferior to the rest of the population. He thought it would be more correct to use the expression "ethnic groups", which, in fact, also appeared in Argentina's report, or to refer to those groups by their names.

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(Mr. Devetak)

3. In section 14 of the report reference was made to the non-compulsory or voluntary integration of those groups in the life of the nation. That was a question to which particular attention should be given, since ethnic groups usually were not willing voluntarily to lose their identity and be assimilated to the rest of the population. There were all too many cases - and he wished to make it clear that he was not referring specifically to Argentina - in which that principle had been used as a pretext for assimilating such ethnic groups and destroying their distinctive cultural characteristics. Thus, it was difficult to speak of voluntary or involuntary integration; such integration was necessary, but its purpose should be to secure the economic and social development of those ethnic groups and at the same time preserve their cultural characteristics. Realizing that it was not enough to allow such ethnic groups purely formally equality, the authors of the Convention had provided in article 2, paragraph 2, of the Convention that special and concrete measures should be taken in the social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups, and stipulated in article 1, paragraph 4, that such special measures would not be deemed racial discrimination. In the light of those considerations, he felt that it would have been very useful for the Committee if the report had included more information about practical measures, sources of financing for those measures and institutions responsible for applying them.

4. According to the report, some of the characteristics of ethnic groups were: living in a group or in some form of group or community and having a habitat that was the same as or close to that of their pre-Hispanic location. He would like to know whether those were essential prerequisites for the enjoyment by such ethnic groups of the benefits of special measures adopted in their favour.

5. Mr. Lamprey took the Chair.

6. Mr. PARTSCH said that while the supremacy of the federal laws over provincial laws had been clarified in the course of the examination of earlier reports submitted by Argentina, the same was not true with respect to the order of precedence of the various types of federal law. He presumed that, as in the case of other countries which followed the French legal tradition, the Constitution in Argentina was more authoritative than laws and treaties; nevertheless, he would like to know whether a treaty, upon entering into force, automatically superseded laws

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(Miss Richter, Argentina)

17. In section 10 of the report it was indicated that aliens had less access than nationals to housing under programmes and plans financed or sponsored by the State through the Department of Urban Development and Housing. The explanation was that plans under which long-term low-interest loans were granted should not benefit persons who might be staying in the country only temporarily; it was not a matter of discrimination but of favouring those who lived in the country permanently.

18. In reply to Mr. Partsch's question concerning section 11 of the report she said it should be pointed out that in the introduction to the new Act on Nationality and Citizenship it was made clear that Argentine nationality by reason of birth derived from a legal attribution whereas acquired nationality derived from a petition. Therefore, nationality was not imposed but was granted to a person applying for it.

19. With regard to section 12, it was difficult to define the meaning of the term "aboriginal" and that difficulty was reflected in the results of censuses and demographic surveys. Replying to Mr. Nabavi, she explained that, since no specifically racial or ethnic categories were used in censuses, it was necessary to have recourse to linguistic criteria, such as the use of an aboriginal language. The fact that there was no discrimination, which was reflected in the aforementioned absence of racial categories, was also reflected in the institutional framework: the Department of Indigenous Affairs no longer existed, and currently the competent body was the Secretariat of State for Social Development and Welfare, which was not concerned exclusively with the aboriginal communities but with the rest of the population as well, especially the most underprivileged groups. With regard to the concern expressed by Mr. Devetak about the status of aboriginal or indigenous persons, the next report would include the requisite clarifications concerning the laws and regulations in force. It should be noted that the indigenous inhabitants' lack of knowledge of Spanish was a serious problem, for the indigenous languages existed only in oral and not in written form, so that when the aboriginal inhabitants learned to read and write they could not apply that knowledge in their own language. That fact was also related to the concern expressed by Mr. Nabavi and Mr. Partsch regarding the right to vote. That right was granted universally and without exception, but in order to be a public official it was necessary to know how to read and write. It should be noted that great efforts were being made to preserve the culture of the indigenous inhabitants, including their crafts. There were official bodies, such as the National Arts Fund, and provincial and private bodies which were seeking to preserve and revalorize /...

(Miss Richter, Argentina)

that culture. Furthermore, the authorities were seeking to raise the levels of living of the aboriginal communities, despite the difficulties of reaching those groups, which were often nomadic and were not composed exclusively of indigenous persons.

20. With regard to a question put by Mr. Valencia Rodriguez, she said there were all kinds of official measures directed against racism, ranging from official instruction plans to efforts to ensure that the press reflected the official anti-racist attitudes. As an example, she noted that in connexion with the celebration of the International Day for the Elimination of Racial Discrimination the Government had issued a communiqué that had been widely disseminated by the press, and that the same course had been followed in connexion with the celebration by the Government of the International Anti-Apartheid Year.

21. With regard to the question put by Mr. Goundiam concerning paragraph 16 of the report, she said that although Argentina had signed the International Convention on the Suppression and Punishment of the Crime of Apartheid in December 1977, it had not yet ratified that instrument.

22. Lastly, replying to a question put by Mr. Devetak concerning the implementation of article 1, paragraph 4, of the Convention, and the questions of Mr. Devetak and Mr. Nabavi concerning the implementation of article 2 of the Convention, she said the explanations given in connexion with the question of the indigenous inhabitants were relevant in that regard. She added that the provision in article 2, paragraph 2, of the Convention stating that the measures adopted should in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they had been taken had been achieved was in keeping with the policy of the Secretariat of State for Social Development and Welfare, which was seeking to promote the culture of the indigenous inhabitants by various means, including promotion of the economic development of backward areas, with the aim of integrating them with the other sectors of society.

23. Miss Richter withdrew.

Pakistan: fifth periodic report due in 1978 (CERD/C/20/Add.15)

24. At the invitation of the Chairman, Mrs. Hyder (Pakistan) took a place at the Committee table.

25. Mrs. HYDER (Pakistan) explained that the fifth periodic report of Pakistan (CERD/C/20/Add.15) was the continuation of the four earlier reports submitted by the Government of Pakistan, in which much of the information required by the Committee had been supplied, as was borne out by paragraph 97 of the Committee's report to the

(Mrs. Hyder, Pakistan)

General Assembly at its thirty-second session (A/32/18), which stated that "the Constitution of 1973 and Act VI of the same year, amending the Penal Code, fulfilled the requirements of article 4 of the Convention and recognized the rights enumerated in articles 5 and 6". In that report, the Committee, while taking cognizance of the efforts made by the Government of Pakistan to keep its public opinion informed of the dangers of racism, had expressed the view that the Government should make additional efforts to carry out its full obligations under article 7 of the Convention. In that connexion, she said that her Government had throughout striven to take all necessary steps apart from the specific provisions contained in the Constitution and Act VI to prevent racial discrimination and implement the provisions of the Convention. The teachings of Islam, which was a universal religion and advocated equality and tolerance among people of different races, was inculcated from the earliest levels of education. Some members of the Committee had in the previous year expressed the view that religious teaching was not enough to avoid the dangers of racial discrimination. In that connexion, she stated that her Government propagated the concept of racial equality by many other means, for example, the celebration in schools and universities and through the media of United Nations Day, Human Rights Day, the International Day for the Elimination of Racial Discrimination, the International Day of Solidarity with the Struggling People of South Africa and Namibia Day.

26. Furthermore, Pakistan had firmly maintained its position of condemning the Government of South Africa for its inhuman policy of apartheid, which was contrary to the provisions of the United Nations Charter, the Universal Declaration of Human Rights and all norms of civilized human behaviour. Her Government, within its modest means, had contributed regularly to the United Nations Trust Fund for South Africa and to the expenses of the Committee for the Elimination of Racial Discrimination. Furthermore, under the United Nations Education and Training Programme for Southern Africa, Pakistan annually reserved places in various Pakistani educational institutions in order to provide educational facilities for people from southern Africa. With regard to Pakistan's solidarity with the African States which had suffered attacks on their territorial integrity by South Africa and the illegal régime of Ian Smith in Southern Rhodesia, her country had contributed 1 million rupees to Mozambique to help it overcome the effects of the continued raids into its territory by Southern Rhodesia, which had inflicted considerable damage on its economic infrastructure, and had contributed 50,000 rupees each to the Governments of Botswana and Lesotho for the purchase of equipment from Pakistan in order to help those countries to resist the economic and military pressures imposed on them by South Africa and Southern Rhodesia.

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(Mrs. Hyder, Pakistan)

27. The fifth report described the various amendments made to the existing provisions of the Pakistan Penal Code making them specifically applicable to racial discrimination and giving a full account of freedom of access to public places, the protection and remedies available to all citizens of Pakistan against any act of racial discrimination committed by government employees and the ban on institutions and organizations which directly or indirectly propagated racial discrimination. In conclusion, she said that her country, because of its relatively homogeneous population, had happily not been confronted with problems of racial discrimination, and the Constitution and Penal and Civil Codes ensured that no person would be discriminated against on the basis of race, colour, religious conviction or ethnic origin.

28. Mr. VALENCIA RODRIGUEZ said the four previous reports of Pakistan had provided much information about the legislative and administrative measures in force for the implementation of the Convention, and the fifth report confirmed the information already available. The report stressed that the legislation of Pakistan was based on the principles of Islam and that therefore it had not been considered necessary to adopt further measures against racial discrimination. It should be noted, however, that legislative bases for the implementation of the Convention already existed in Pakistan, since any act of racial discrimination committed in bad faith was punishable. In that connexion, the amendment to the Penal Code enacted in 1973 by the National Assembly of Pakistan to implement the Convention was praiseworthy. Among other positive features, it should be stressed that the Constitution of Pakistan guaranteed the right of recourse to the courts to request compensation for any injustice suffered and that, with understandable reservations, the rights of all individuals, and not only those of citizens, were recognized. He was also gratified to note the support given by Pakistan to the liberation movements struggling against colonialism and racial discrimination and to programmes of assistance for the oppressed peoples, and its measures aimed at celebrating United Nations Day, Human Rights Day, the International Day for the Elimination of Racial Discrimination, the International Day of Solidarity with the Struggling People of South Africa and Namibia Day.

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29. Mr. NABAVI praised the amendment to the Pakistan Penal Code and the measures taken by the Government of that country to implement the Convention. Nevertheless, the observations formulated by the Committee concerning the fourth report remained valid. He recalled the Committee's position that the fact that the legislation of a country was based on the lofty principles of Islam did not exempt it from taking specific measures with regard to article 4 of the Convention; Pakistan's recognition of the need to take additional measures struck a positive note. With regard to the explanation of section 505 of the Pakistan Penal Code (appendix I to the report), he inquired whether it was necessary to prove the bad faith and falsity of the alarming statements or rumours in order for the offences considered in that section to be punishable.

30. With regard to the implementation of article 7 of the Convention, although the Government of Pakistan had adopted various measures in that regard, they were not sufficient. Those measures referred primarily to the field of information, and article 7 of the Convention stated that States parties must adopt immediate and effective measures in the fields of teaching, education, culture and information. He hoped that the next periodic report of Pakistan would remedy that omission.

31. In connexion with the consideration of the fourth periodic report of Pakistan, he had ventured to request the Government, through its representative, to include in its next report information on the demographic composition of the population of Pakistan, since he considered that to be an essential element which the Committee must possess in order to evaluate the situation regarding the implementation of the Convention. On the current occasion, he wished to submit that request to the representative of Pakistan once again.

32. Mr. NASINOVSKY noted that in paragraph 1 of the fifth periodic report of Pakistan it was stated that since the people of Pakistan had not faced the problem of racial discrimination, it had therefore not been necessary to enact any new laws or administrative measures. If all States parties to the Convention adopted the same criterion to decide whether it was necessary to enact new laws or measures designed to prevent racial discrimination, they would be practically exempt from discharging their obligations under the Convention. Almost all the religions of the world preached equality and tolerance, but that was not a proper approach to decide on the application of the Convention. Moreover, Pakistan's report itself described

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(Mr. Nasinovsky)

a series of legislative and administrative provisions which had been adopted and which to some extent disproved the statement made in paragraph 1.

33. In paragraph 3 (i) of the report, which referred to section 505 of the Penal Code, it was stated that the circulation of any information or rumour or news likely to create enmity or hatred between different races or castes was an offence. The scope of that provision was too limited from the standpoint of the provisions of the Convention, which covered other types of discrimination such as discrimination on grounds of national or ethnic origin. In paragraph 3 (iii), relating to section 99-A of the Code of Criminal Procedure, it was not very clear whether the statement referred only to the forfeiture of the publications or also to the forfeiture of the property of the persons responsible for those publications.

34. Paragraph 3 (v) implied that the Political Parties Act dealt with the prohibition of all forms of racial discrimination, in accordance with the precepts of Islam. However, reference to appendix IV of the report, which referred to that Act, would show that it did not refer to racial discrimination at all. Either an arbitrary interpretation had been given to that Act, or there was a more specific explanation which covered questions of racial discrimination. He asked for clarification on those points.

35. In paragraphs 8 and 9 of the report, mention was made of measures designed to prevent public servants from discriminating between races in the performance of their public duties. He asked whether that prohibition related to public servants only, or whether it also extended to individuals, organizations and private enterprises.

36. Appendix III, subsection (1) (b) referred to the promoting of feelings of enmity or hatred between different classes of citizens. The term "classes" had connotations relating to the distribution of property and the means of production and the Committee was concerned solely with questions relating to racial discrimination, which was an entirely different concept. It was important to know whether that law referred only to hatred between various classes of citizens, in which case it had nothing to do with racial discrimination.

37. Mr. GOUNDIAM, referring to section 505 of the Pakistan Penal Code, the text of which was given in appendix I, said that an offence had three elements:

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(Mr. Goundiam)

the law, the material circumstances, and the intent. In section 505, the material aspect was clearly explained since mention was made of making, publishing or circulating a statement, rumour or report. Similarly, the element of intent was made clear by the indication that any such act had to be carried out "with intent to create or promote" feelings of enmity, hatred or ill-will between different groups. However, the following phrase, "or which is likely to create or promote", alluded to a possibility, not to any intent. He asked for clarification regarding the exact interpretation of that text.

38. Mr. VIDELA ESCALADA said that, although the report was a very full one, there was one omission: it did not explain how Pakistan complied with its obligations under article 7 of the Convention regarding education and culture. In the next report, adequate information on that point should be included and fuller data should be provided on the legislative provisions adopted in accordance with article 5 of the Convention.

39. Mr. BRIN MARTINEZ expressed satisfaction that the report was so full. However, he would like clarification regarding paragraph 3 (iv) regarding the Security of Pakistan Act of 1952, which authorized the imposition of restrictions on the movement of persons. It would be helpful to have the text of that Act in order to be able to establish whether the restrictions were related to any form of racial discrimination. With regard to paragraph 3 (v), relating to the Political Parties Act of 1962, he asked what would be the position of a non-Islamic religious group vis-à-vis that Act.

40. Mr. PARTSCH pointed out that, in response to a request from the Committee, clarification had been provided concerning the new provisions of the Penal Code of Pakistan and it had been made clear that it met the requirements of article 4 of the Convention. From a comparison of the provisions of section 505 (2) and section 153-A (a) of the Penal Code, it would appear that the same acts were punished, in the first case, by up to seven years' imprisonment and, in the second case, by up to five years' imprisonment. He asked for clarification regarding the apparent discrepancy.

41. With regard to the Political Parties Act, he said that, after having considered the report of the United Arab Emirates and the detailed explanation

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(Mr. Partsch)

given when it had been presented concerning the Koranic principles applied to legislation, it would seem that in the case of Pakistan the situation was different since the State was authorized to punish failure to comply with Koranic principles. It would be useful to have more information on that point, in the context of article 4 of the Convention.

42. Mr. DAYAL said that, in studying the fifth report of Pakistan, he had taken into account the extent to which it provided information additional to that provided in earlier reports. When the fourth report had been submitted, information had been requested concerning the measures adopted to give effect to article 7 of the Convention, in particular regarding measures to keep the population informed concerning the United Nations and its activities, apartheid etc. It would be useful to have such information.

43. With regard to compliance with article 4 of the Convention, he said that during the consideration of the fourth report, there had been an extensive debate on the Constitution of 1973 and Act VI of the same year and the Committee was of the opinion that they substantially fulfilled the requirements of that article.

44. Referring to the statement in paragraph 1 of the report to the effect that Pakistan was composed of a relatively homogeneous racial group which followed the precepts of Islam and that for that reason it had not been necessary to enact any new laws or administrative measures to deal with racial discrimination, he pointed out that such considerations were not sufficient. In fact, however, the Government of Pakistan had been making practical efforts to comply to an increasing degree with the obligations it had assumed under the Convention.

45. Mr. NETTEL said that, although in paragraph 97 of the Committee's report to the General Assembly at its thirty-second session it was stated that the Constitution of 1973 and Act VI of the same year, amending the Penal Code, fulfilled the requirements of article 4 of the Convention and recognized the rights enumerated in articles 5 and 6, shortcomings had once again been noted in the consideration of the fifth report. Those changes were disturbing because they created uncertainty among the States parties.

46. Mr. SAYEGH said he did not share Mr. Nettel's concern since the degree to which reports were considered satisfactory varied according to the availability

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(Mr. Sayegh)

of information. He pointed out that the satisfaction produced by paragraph 6 of the report, which mentioned article 25 and article 199 (1) (c) of the Constitution, setting forth, respectively, the equality of all citizens before the law and the competence of national tribunals in the matter of acts of racial discrimination, was offset by paragraphs 7, 8 and 9, which dealt with offences related to racial discrimination committed by public servants but made no mention of discrimination by other individuals or bodies. He asked the representative of Pakistan whether there were any legal guarantees in her country against that second type of discrimination and requested information on possible cases of discrimination by individuals referred to the tribunals.

47. Mr. PARTSCH said he did not understand Mr. Sayegh's concern since in appendices I and II, relating to amendments to the Penal Code, no distinction was made between public servants and individuals with regard to punishable offences.

48. Mrs. HYDER (Pakistan), replying to Mr. Nabavi, said that perhaps the wording of the explanation given at the end of appendix I of the report was not very clear. Nobody, in any circumstances or by any means, should try to promote feelings of enmity between different racial groups. However, if through ignorance or unawareness a person committed acts without any intent to achieve those results, such acts were not punishable by the law. In that case, intent was the determining factor. With regard to the demographic composition of the population, she apologized for the failure to include the relevant data in the report of Pakistan, but that was due to the fact that the censuses taken in Pakistan did not classify the population on the basis of race or ethnic origin. With regard to the fact that measures had not been adopted on all aspects of article 7 of the Convention, she pointed out that such measures were unnecessary since the curricula used in Pakistan had always instilled in pupils the principle of the absolute equality of all persons and condemned any difference in treatment on racial grounds.

49. Replying to Mr. Nasinovsky, she emphasized that the function attributed to the precepts of Islam in paragraph 1 of the report was fully justified since in Pakistan society religion was the basis of culture and the system of values and Islam was totally incompatible with any type of racial discrimination. With regard to section 153-A of the Pakistan Penal Code, she said that in interpreting

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(Mrs. Hyder, Pakistan)

that section the Pakistan authorities gave it a breadth and scope which fully accorded with the provisions of the Convention. The forfeiture referred to in section 99-A of the Code of Criminal Procedure was only the forfeiture of publications which propagated racial discrimination and not of the property of their authors. It had also been said that, in view of the fact that section 3 of the Political Parties Act dealt with the formation of parties which propagated ideas contrary to Islamic ideology, it could impede freedom of worship. She stated that in Pakistan there was absolute freedom of worship and that the non-Islamic population, which made up 5 per cent of the population of the country, could freely practise its religious beliefs. The Government of Pakistan had taken steps to protect religious minorities and to ensure the enjoyment of the rights of freedom of worship by non-Moslem minorities in Pakistan.

50. With regard to restrictions on the authority of the State, and in reply to the comments made by Messrs. Partsch, Sayegh and Nasinovsky, she explained that any person, whether an individual or a public servant, was subject to judicial proceedings if he engaged in discriminatory activities. The reason why in paragraph 8 of the report mention was made in particular of public servants was that it was considered that they had even greater responsibilities in that respect; for her part, she did not recall any case of racial discrimination committed by a public servant.

51. In response to the request made by Mr. Brin Martinez, the text of the Security of Pakistan Act would be included in Pakistan's next report. With regard to the doubt raised by Mr. Partsch, the next report would also include data to clarify the discrepancies he had pointed out between sections 505 and 153-A of the Penal Code.

The meeting rose at 6.05 p.m.

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