

SUMMARY RECORD OF THE 409TH MEETING
held on Tuesday, 27 March 1979, at 10.30 a.m.
Chairman: Mr. LAMPTEY
The meeting was called to order at 10.40 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Fifth periodic report of the Philippines (CERD/20/Add.9 and Add.30)

1. At the invitation of the Chairman, Mr. Manzano (Philippines) took a place at the Committee table.
2. Mr. MANZANO (Philippines) introduced documents CERD/C/20/Add.9 and Add.30 and described action taken by the Philippine Government at the international level to counter racism and apartheid. The former document had been available to the Committee at its eighteenth session, but his country had asked for the postponement of its consideration to the nineteenth session, pending the submission of additional information, specifically the text of a Presidential Decree dated 17 April 1978 which declared unlawful, and provided penalties for, violations of the Convention. The text of the Decree had been circulated as document CERD/C/20/Add.30. The two documents together constituted his country's full report under article 9 of the Convention. His Government knew of no case of proceedings having been instituted for an offence of racial discrimination under the Presidential Decree in question.
3. Mr. VALENCIA RODRIGUEZ welcomed the policy followed by the Government of the Philippines with respect to the racist régimes of southern Africa and their racist practices. That policy of the Philippines was consistent with decisions by United Nations bodies concerning the attitude to be adopted by the international community with respect to the apartheid practices of South Africa. He commended the Philippine Government for the steps it was taking at the international level to further the aims of the Convention and to supply financial assistance to the African peoples, victims of colonialism and racial discrimination. He noted with great satisfaction the terms of the Decree which fully provided for the application of article 4 of the Convention. He hoped that the next report from the Philippines would give details concerning the application of the Decree.
4. Mr. GHONEIM noted with satisfaction the promulgation by the Government of the Philippines of a decree giving effect to article 4 of the Convention. It was most important that States parties to this Convention should take the necessary steps to bring municipal law into line with the provisions of the Convention.
5. During the debate at an earlier session on the fourth periodic report submitted by the Philippines, the question had been raised whether or not the 1973 Constitution was still fully in force in that country. Information had also been requested about the effect which the régime of martial law might have on the observance of human rights and the prevention of racial discrimination in the Philippines. The fifth report contained no details on those subjects and he would appreciate it if the representative of the Philippines could enlighten the Committee on those points. He added that the population breakdown provided in the fourth report of

the Philippines had been by mother tongue and that the Committee had wondered to what extent there was a correlation between linguistic and ethnic groupings. He inquired furthermore if any measures had been taken to promote the integration of minority groups into society in accordance with the provisions of the Convention. For example, what kind of action had been taken in the fields of education, culture and information to combat prejudice and to foster tolerance towards ethnic groups?

6. Mr. DECHEZELLES said that the two reports submitted by the Philippines deserved high praise and the Government of the Philippines deserved to be congratulated on the action it had taken. The report contained in document CERD/C/20/Add.9 clearly showed that the Government of the Philippines was doing all in its power at the international level to struggle against apartheid, and the Decree reproduced in document CERD/C/20/Add.30 showed that co-operation between States parties to the Convention and the Committee could attain a very high level, for the Decree not only reproduced the language of article 4 of the Convention but also defined specific offences and set out penalties for such offences, the penalties being more severe in the case of offences committed by government officials or employees. He believed it appropriate that the Committee should pay a tribute to one of its former colleagues, Professor Ingles, who had probably been largely instrumental in bringing about the promulgation of the Decree.

7. It was only natural that some problems remained to be solved, and he would welcome information in the future on action taken to give effect to other provisions of the Convention and on the application of new measures. He would be interested to hear of any case in which proceedings had been instituted against persons accused of racism in the Philippines.

8. Mention had been made of the existence of martial law in the Philippines. He pointed out that the Philippines was made up of several thousand islands, that its population - largely of Malay origin - spoke a number of dialects and that there were three official languages in the country. A great effort was needed at the national level to harmonize the needs of such a heterogeneous and widely scattered population. In that respect article 7 of the Convention was of special importance. For the moment, it sufficed to note that the Government devoted a very large part of its budget to education. He understood that a new Constitution, parliamentary in nature, had been promulgated in 1972, but that the date of its entry into force had not been fixed for internal reasons. That decision had been taken with the wide approval of the population which had been consulted by referendum. The concern of the Head of State, who held both executive and legislative power, was to reduce social inequalities as far as possible. It was reassuring to note in the circumstances that the Government of the Philippines was deeply concerned with human rights, as was clearly evident from the terms of the Decree which had been brought to the Committee's attention.

9. Mr. GOUNDIAM congratulated the representative of the Philippines on the two reports before the Committee and on the action his Government had taken against apartheid. He believed that under the legal system of the Philippines, being of the Anglo-Saxon type, special legislation was required to put international conventions ratified by the Government into force at the national level. If that was the case, he asked if, after ratifying the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Government of the Philippines had taken steps to introduce the necessary provisions into national legislation.

10. He appreciated the readiness of the Philippine authorities to promote human rights and to take action to eliminate racism. All action taken against racism and especially against apartheid was of the greatest importance. He recalled that a group of experts, under the auspices of the United Nations was currently working on the preparation of a draft convention on the taking of hostages. Some members of that group wished to include in the draft convention provisions under which liberation movements, especially the liberation movements of Southern Africa, would have, among other rights, the right to take hostages, whereas other members of the group opposed that idea, pointing out that the Fourth Geneva Convention of 1949 prohibited the taking of hostages. He enquired whether the Government of the Philippines would regard the taking of hostages by liberation movements as an offence.

11. Referring to document CERD/C/20/Add.30, he welcomed the incorporation of article 4 of the Convention in the Presidential Decree reproduced in that document. It was noteworthy that under section 3 (b) of the Decree the maximum penalty was applicable to a government official or employee found guilty of racial discrimination, for the official policy of a Government might not always be reflected in the behaviour of each and every one of its officials; but he wondered why that provision mentioned only offences against a race or group of persons and did not refer to offences against an individual member of another race or group.

12. Mr. NABAVI said that the President of the Philippines deserved to be commended for the positive action he had taken. He (Mr. Nabavi) had little to add to what had been said by previous speakers. He would, however, welcome a reply to the questions put by Mr. Ghoneim. During the examination of the third and fourth reports submitted by the Philippines, some members of the Committee had asked for further details about the demographic composition of the Philippines and inquired to what extent linguistic minorities coincided with ethnic minorities. They had also asked for information on the possible effects of martial law on the observance of human rights and the application of the Convention, particularly of the provisions of article 7. Very little information had been supplied on the action taken to implement article 7, which most Committee members considered a most important article.

13. Mr. BAHNEV, after endorsing the views expressed by Mr. Nabavi and Mr. Goundiam, welcomed the entry into force of Presidential Decree No. 1350-A. He would be particularly interested to learn how its provisions were juridically and administratively applied. As regards the penalties, a maximum of 30 days' imprisonment seemed lenient for the serious crimes referred to in section 3 (a). Furthermore, he requested clarification regarding the different penalties prescribed under section 3 (b), which seemed to depend on a distinction between membership of and holding office in a racist organization.

14. In the light of the debate on the fourth periodic report, he wished to place on record his view that more information was needed on the way in which article 5 of the Convention was being implemented in the Philippines. That article contained a long list of political and civil as well as economic, social and cultural rights, covering every aspect of an individual's life. Detailed information on the measures taken to ensure that those rights were respected would enable the Committee to decide whether racial discrimination existed in the Philippines and how it was proposed to eliminate it.

15. The fifth periodic report was silent on the steps being taken in the Philippines to help racial minorities and groups to become an integral part of the nation. In view of the geographical, racial and linguistic configuration of that country, such assistance was badly needed if all groups were to achieve full equality. He therefore requested further information on the application of paragraphs 1 (e) and 2 of article 2 of the Convention and on the effects of the state of martial law.

16. In conclusion he expressed his gratitude to the Government of the Philippines for its report on activities carried out in compliance with articles 3 and 4 of the Convention.

17. Mr. VIDELA ESCALADA thanked the Government of the Philippines for its co-operation and expressed his satisfaction with the Presidential Decree set forth in the addendum to the fifth periodic report. In the light of the views expressed by Mr. Bahnev, he asked for clarification regarding the penalties provided for under section 3 of the Decree. In his view, it was entirely proper to prescribe a more severe punishment for officers of a racist organization than for mere members, and he also endorsed the provisions of section 4.

18. He would appreciate further information on the distribution of the population according to language and on the way in which the various languages corresponded to racial groups. He further asked whether martial law still prevailed or whether it was applied selectively to certain ethnic or linguistic groups, to the detriment of their rights under article 5 of the Convention.

19. A broader picture of educational and cultural measures was also necessary. Information on the action taken to comply with article 7 of the Convention was crucial in the case of the Philippines, with its complex demographic composition. He wondered, therefore, whether complete equality existed for all ethnic groups and what measures had been taken to integrate them into the nation without loss of cultural identity.

20. Mr. BRIN MARTINEZ associated himself with the congratulations voiced regarding the measures taken by the Government of the Philippines to give effect to articles 3 and 4 of the Convention. The Philippines had strongly supported all United Nations activities to combat racial segregation, apartheid and other similar practices. However, he wished to point out to all States parties that measures taken under some articles often had to be supplemented by action under others, paying particular attention to article 5. If certain political and civil rights, as well as economic, social and cultural rights, were denied, then there could be no guarantee that all citizens of a country enjoyed complete equality. That was particularly true in the case of the Philippines, where ethnic and geographical factors required special measures to ensure that the entire population was able to exercise all those rights. Accordingly, he expressed the hope that the Government of the Philippines in its next periodic report would give full particulars of progress achieved towards the implementation of article 5 of the Convention.

21. Mr. NETTEL pointed out that Presidential Decree No. 1350-A, which closely followed the wording of article 4 of the Convention, did not indicate the nature of the court competent to deal with the cases it covered. Such information was essential. Since the Decree had entered into force over a year ago it would be

interesting to know whether any cases had so far come before the courts. In an earlier report, the Government of the Philippines had stated that no such case had ever come before the authorities. Such a statement did not mean, however, that racial discrimination did not exist.

22. Article 6 of the Convention - a crucial article - was sometimes unjustly neglected by the Committee. No legislation would help, unless the individual was in a position to help himself. He wondered whether a citizen of the Philippines could sue for damages if, for instance, he were denied employment as a government official on grounds of race. Generally speaking, he would appreciate more information on the precise provisions governing the implementation of article 6.

23. Mr. DAYAL expressed his satisfaction with the measures taken by the Philippines in regard to racial practices in southern Africa. As far as the Presidential Decree was concerned, it should be noted that it reproduced in large measure, the wording of article 4 of the Convention, which referred not to individuals, but to races or groups. No doubt individuals were protected under other laws, and he would be grateful to have that supposition confirmed.

24. Reference had been made to the scale of the penalties prescribed in the Presidential Decree. While he agreed that members and officers of a racist organization should be treated differently, he felt that the punishment should be severe enough to act as a deterrent. A maximum of 30 days' imprisonment under Section 3 (a) appeared inadequate for that purpose.

25. It has already been pointed out that the fifth periodic report failed to answer the questions raised during the discussion of the previous one, in particular concerning the matter of race and language. Without such information, it was difficult for the Committee to gain an objective insight into the situation in the Philippine archipelago. It should also be noted that one of the purposes of holding the present session in Paris was to study the reports from the point of view of article 7. Once again, insufficient information was available and that lack should be made good in future.

26. He also requested information on the effect of the continuation of the state of martial law on fundamental rights and freedoms. Were they in abeyance and, if so, what protection was available to citizens?

27. Finally, he expressed his thanks to the representative of the Philippines and hoped that the Committee would continue to enjoy his co-operation.

28. Mr. PARTSCH, after endorsing the views expressed regarding the importance of article 6 of the Convention, pointed out that Decree No. 1350-A referred to the powers vested in the President of the Philippines by the Constitution. However, as the Committee was aware, the Constitution had been partially superseded by martial law. He wondered, therefore, to what extent the Decree was compatible with the provisions of the Constitution and whether it might not lapse when the Constitution again came into full force. Finally, he congratulated the representative of the Philippines on his spirit of co-operation.

29. Mr. DEVETAK said that the information contained in the report on the policy adopted by the Philippines towards racial discrimination and apartheid was of general political importance, in that it reflected an attitude that should be

shared by all States. It had to be acknowledged that, in spite of all the efforts made to overcome racialism and apartheid, insufficient progress had so far been achieved. It was therefore the Committee's duty to attach more importance to that issue. The Philippines deserved congratulation on its twofold efforts: first, in supporting the activities of the United Nations, and second, in changing public opinion with regard to the domestic policies of the racist régimes in southern Africa. In that connexion, he suggested that the Committee should appeal to the States parties to the Convention to provide more information in future on their activities in pursuance of article 3.

30. The fourth periodic report of the Philippines had contained statistical information relating to the more than 80 linguistic groups in that country. He inquired whether those groups corresponded to ethnic groupings. He would also welcome additional information on the efforts made to facilitate the political, social and economic integration of the various groups, with due regard for their cultural and linguistic heritage. That information would be particularly useful to the Committee, since it needed specific examples on which to base its future work.

31. Mr. GOUNDIAM asked for clarification of the penalties provided for in Section 3 (a) and (b) of the Presidential Decree. Under the legal system with which he was familiar, the punishment prescribed under subparagraph (a) corresponded to a minor offence, while that under subparagraph (b) corresponded to a major offence.

32. Mr. DECHEZELLES said that, while the Government of the Philippines deserved to be commended for the action taken to implement articles 3 and 4 of the Convention, he recognized that, because of the special domestic situation which had necessitated the imposition of martial law, it would be some time before the new Constitution could come into force and articles 5, 6 and 7 implemented in full.

33. In general, a number of different views had been expressed during the session regarding the interpretation of article 5. Some members tended to consider it restrictive, arguing that when one of the rights listed in article 5 was recognized in a country the practice of discrimination between persons in respect of that specific right was not to be allowed. Others felt that States parties to the Convention were responsible for guaranteeing the full enjoyment by all of the rights listed in article 5; that meant the recognition of those rights in the widest possible sense, and particularly in so far as they related to fundamental freedoms. He supported the latter view.

34. The CHAIRMAN, speaking in his capacity as a member of the Committee, said a number of interesting issues had been raised on which he would like to comment. The point raised by Mr. Goundiam concerning the taking of hostages hardly came within the scope of the Committee's work. With regard to the point raised by Mr. Bahnev, he could agree that a penalty of not more than 30 days' imprisonment was perhaps not a sufficient deterrent against incitement to racial discrimination; however, the choice of penalty was essentially a domestic matter for the State concerned. After all, conditions varied from one society to another; in one country, for example, a ten-year sentence might be considered a relatively light penalty, whereas in another a sentence as short as 10 days might be considered as very severe, particularly if its effect was to disqualify the person concerned forever from holding public office. He felt that it was appropriate that a more

severe penalty should be imposed if the offender was an officer of an organization than if he were merely a member, although the principle of the appropriateness of penalties in relation to offences was not one which was dealt with in the Convention.

35. On the issue of reparations for individuals who had suffered some prejudice as a result of racial discrimination, he agreed with Mr. Nettel on the importance of the implementation of article 6. On the question of article 5, he drew attention to the initial report submitted by the Government of the Philippines (CERD/C/R.3/Add.13) which had given details of the legislative measures it was taking to safeguard the various rights listed in that article. As he saw it, the essential principle of article 5 was that there should be no discrimination on grounds of race in the guaranteeing to all of the enjoyment of basic human rights; thus, should certain rights be suspended in consequence of the declaration of a state of martial law, what should concern the Committee was whether or not there had been any racial discrimination in the suspension of those rights. He pointed out that, even in cases where martial law was declared, the constitution of the country concerned was normally only partially suspended and most of its provisions continued to be operative. He did not share Mr. Partsch's view that, after the Philippine Constitution was restored to full force, the Decree might lapse; that view was based on an interpretation of article 4 as being restrictive of freedom of speech and freedom of association. He did not believe that the Decree restricted such freedom in any way, and it should therefore be capable of application on a permanent basis.

36. Speaking in his capacity as Chairman, he summarized the questions on which clarification was being sought from the representative of the Philippines. Mr. Ghonein had asked whether any measures had been taken, in implementation of article 7, to assist minority racial or ethnic groups. Mr. Goundiam had asked what steps had been taken in the Philippines to implement the International Convention on the Suppression and Punishment of the Crime of Apartheid. Concern had been expressed over the implementation of the provisions of article 6 in regard to the guaranteeing of remedies to the individual against human rights violations. Finally, Mr. Devetak had asked what progress was being made towards the social, political and cultural integration of minority linguistic groups in the Philippines.

37. Mr. BAHNEV said the point he had raised concerning differences in the severity of the penalties indicated in Section 3 (a) and (b) of the Presidential Decree had arisen through a discrepancy between the English and Russian versions. However, he maintained his view that the penalty of 30 days' imprisonment under Section 3 (a) was too lenient. In connexion with the Chairman's comment, he pointed out that there was no mention in the text of the Decree of the possibility of an offender being disqualified for public office.

38. In raising the issue of the implementation of article 5 of the Convention, he had been concerned not so much with the legal position in the Philippines as with the extent to which the rights mentioned in that article were in practice enjoyed by the people of that country.

39. The CHAIRMAN said that he had mentioned the possibility of debarment from public office merely as an example; he had not intended to imply that such a penalty was actually imposed in the Philippines.

40. Mr. GOUNDIAM said he could not agree with the Chairman that the issue of the taking of hostages was not one of direct concern to the Committee. In his opinion, it would be of interest to the Committee to know whether any penalties that might be imposed for such an offence would be effective in helping to combat racialism. He agreed that the question of the recovery of damages for prejudice suffered as a result of racial discrimination came within the scope of article 6; however that article was concerned only with civil remedies, not with penalties for criminal offences.

41. Mr. PARTSCH endorsed the Chairman's view that the question of the degree of severity of penalties imposed was outside the competence of the Committee and was the concern of individual States. He had not intended to express an opinion regarding the relation between the Constitution of the Philippines and the Presidential Decree, but merely to ask what in fact that relationship was.

42. Mr. DECHEZELLES said he agreed in principle with Mr. Bahnev's comments on the importance of obtaining information regarding the observance of political, civil and economic rights. However, it should be remembered that there were other rights besides those which had received special mention, notably those relating to freedom of religion, thought and expression, which were of equal importance, and without which efforts to combat racial discrimination would be incomplete.

43. Mr. MANZANO (Philippines) appreciated the Chairman's summary of the questions raised and endorsed the comments he had made. He pointed out that the Constitution of the Philippines had never in fact been suspended, and was still effective. The powers being exercised by the President under the regime of martial law currently in force were fully in accordance with the provisions of the Constitution. It was under those powers that the presidential decree under consideration was issued. Presidential decrees would, in accordance with the same Constitution, remain valid after the lifting of martial law. Under the martial law régime, the individual was free to exercise his civil, political and human rights. Nor was it the case that the normal processes of the judiciary had been suspended; they were fully operative.

44. In his view, the crime of apartheid could well be covered under Section 3 of the Decree, which referred specifically to article 4 of the Constitution. He pointed out that Section 4 of the Decree did not preclude the punishment of offenders under other penal laws of the Philippines. Section 4 would also cover the awarding of reparations under the Civil Code to persons who might have suffered damage as a result of racial discrimination.

45. On the question of the treatment of ethnic groups, he said that there was in fact no distinction on racial or ethnic grounds between different population groups in the Philippines. There were three official languages, English, Filipino, and

Spanish, the first of which was in use throughout the country. Similarly, there was no question of any differentiation on such grounds in the field of social, cultural and economic development.

46. The CHAIRMAN thanked the representative of the Philippines for his answer to some of the questions, and hoped that the remaining questions would be answered in the Philippine Government's next periodic report. He expressed his appreciation of that Government's continued co-operation with the Committee.

The meeting rose at 1.05 p.m.