

484th meeting

Thursday, 7 August 1980,
at 3.10 p.m.

Chairman: Mr. BAHNEV

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

Sixth periodic report of Pakistan (CERD/C/66/Add.10)

At the invitation of the Chairman, Mr. Ahmad (Pakistan) took a place at the
Committee table.

1. Mr. AHMAD (Pakistan) emphasized that his country's sixth periodic report (CERD/C/66/Add.10) was a continuation and elaboration of the five previous reports, which had all underscored the fact that racial discrimination, as such, did not exist in Pakistan in any form whatsoever. Those reports had also described legislative, judicial, administrative and other measures which reflected his Government's determination to prevent any form of racism or racial discrimination, a position which Pakistan still firmly maintained. There was no place for racial discrimination in Pakistan's religion. Islamic values and ideals did not allow any distinction to be made between human beings on grounds of race, colour, descent or national or ethnic origin, nor were there any policies, laws, regulations or conventions in Pakistan that could conceivably be considered as encouraging discrimination of any kind.
2. The sixth periodic report contained information provided in response to questions raised during the discussion of Pakistan's fifth periodic report. It also contained the constitutional provisions prohibiting racial discrimination in the field of political, civil, economic, social and cultural rights, together with measures taken in the implementation of the provisions of the Convention, namely, amendments to certain provisions of the Penal Code and the Code of Criminal Procedure of 1898.
3. The commitment of the Government of Pakistan to strict compliance with the provisions of the Convention was manifested in article 227 (1) of the Constitution, which called for a review of national legislation to bring it into conformity with the injunctions of Islam, as laid down in the Holy Koran and Sunnah. For this purpose, as explained in paragraph 11 of the report, the Council of Islamic Ideology, consisting of eminent religious scholars and jurists, was constantly reviewing the national laws. A permanent Law Reform Commission had also been set up in 1979 to review the existing laws for any improvement. Thus, although racial discrimination was non-existent in Pakistan, the Government remained fully conscious of its obligations under the Convention and kept those obligations in mind when reviewing the structure of its national laws.
4. Pakistan had consistently supported those oppressed people who were engaged in the struggle against racial intolerance, exploitation and oppression, and was proud of its active role in the efforts towards ending the evils of minority rule and apartheid in Africa, as described in paragraphs 13 to 19 of the sixth periodic report. Pakistan had provided all possible assistance to victims of racism and racial discrimination, both on a bilateral basis and through the United Nations and other international agencies.

(Mr. Ahmad, Pakistan)

5. In conclusion, briefly reviewing the salient points of the report, he noted that the constitutional and judicial framework of Pakistan, through the judicial process, also guaranteed effective protection against, and remedies for, any act of racial discrimination, that educational facilities were open to all citizens without distinction, and that effective measures had been taken to prevent any seditious activity aimed at fostering hatred between different races or castes. Unreserved support for the international struggle against racism and apartheid was one of the cardinal principles of Pakistan's foreign policy and as a State party to the Convention, Pakistan would continue its full co-operation with the Committee.

6. Mrs. SADIQ ALI praised the thoroughness of the sixth periodic report of Pakistan. In connection with paragraph 2, she requested clarification of the statement that Urdu was the national language of the country and inquired about the official language policy pursued. She also inquired about the relationship between Urdu and the regional languages within the educational system and wished to know at what level Urdu was introduced. She asked whether public service examinations were given in the regional languages as well as in Urdu and whether scripts other than Arabic were recognized.

7. She pointed out that the demographic breakdown described in paragraph 3 did not mention any of the Moslem sects, and asked whether such figures could be provided. She also inquired what percentage of the population were Sikhs, whether the Sikhs had been included among the caste Hindus or in the "others" category and whether there were any facilities to enable Sikhs to visit their shrines.

8. She requested a more specific explanation of the words "reasonable restrictions" used in article 17 (1) and (2) of the Constitution of Pakistan, as quoted in paragraph 6 of the report.

9. Moreover, she did not think that the provisions of article 24 (4) of the Constitution, quoted in the same paragraph, were in conformity with article 6 of the Convention, because no provision was made to enable an individual to seek redress if he did not consider the compensation to be adequate. Accordingly, she asked for clarification of those provisions.

10. She also requested clarification with regard to article 28 of the Constitution, the provisions of which, like those of article 17, were subject to certain restrictions.

11. While the efforts of the Pakistan Government to ensure communal harmony were on the whole commendable, she asked what authority judged cases involving the exception to section 505 of the Pakistan Penal Code, referred to in paragraph 9 of the report, and what criteria were used in such decisions.

12. In connection with the review of national legislation referred to in paragraphs 11 and 12, she asked whether the provisions in question had an impact on other religious communities, or whether they applied only to Moslems. She also requested additional details about the relationship between the Government and religious law and asked whether Islamic or modern law was being applied to repress crime. She likewise asked whether all laws came within the purview of the Permanent Law Reform Commission.

(Mrs. Sadiq Ali)

13. With regard to measures taken to implement article 7 of the Convention, she praised the liberal policy pursued in that connection, but observed that religious education appeared to be compartmentalized. Accordingly, she asked whether there were any provisions for exchanges of information among the various religious groups in order to familiarize them with each other.

14. In conclusion, she praised Pakistan's policies against apartheid and its support for the people of southern Africa.

15. Mr. VALENCIA RODRIGUEZ observed, in connection with paragraph 9 of the sixth periodic report of Pakistan, that even a homogenous population could be composed of several different religions and ethnic groups, speaking different languages. He asked whether the amended provisions of section 505 of the Pakistan Penal Code, quoted in that paragraph, had ever been applied and, if so, how the courts had interpreted the words "without any such intent", as used in the exception to those provisions.

16. In connection with the review of national legislation described in paragraphs 11 and 12, he asked whether there was any incompatibility between the functions of the Council of Islamic Ideology and those of the Permanent Law Reform Commission.

17. In general, he felt that Pakistan was complying with its obligations under article 4 of the Convention.

18. With regard to the clarification concerning section 505 (2) and section 153 (a) of the Pakistan Penal Code (CERD/C/66/Add.10, paras. 33 and 34), he noted that ordinary courts were apparently competent to consider the offences in question and that longer sentences than five or seven years' imprisonment could in fact be imposed. He asked for an explanation of the legal grounds on which courts could impose longer sentences, and under what law or laws they could grant the compensation referred to in article 6 of the Convention.

19. He praised Pakistan's support for efforts to combat racism, to implement the principles of the United Nations and the decisions of the General Assembly and Security Council, and its material and moral support for the victims of racial discrimination.

20. With regard to the measures taken to implement article 7 of the Convention, which were described in paragraphs 24 to 28 of the sixth periodic report, he requested that additional information on teaching and religious education be provided in the next report, particularly in connection with measures taken to disseminate information about the objectives of the Convention and the work of the Committee among all groups of the population.

21. Lastly, he noted, with regard to the demographic structure of the population, that information had been provided only on the languages spoken and religions practised in Pakistan. Accordingly, he expressed the hope that the information requested previously would be supplied in the future.

22. Mr. PARTSCH said that the sixth periodic report of Pakistan was unduly repetitive; members of the Committee should be relied upon to have read previous reports.

(Mr. Partsch)

23. Paragraphs 33 and 34 of the report seemed to imply that the contemplation of an act of racial discrimination was more serious than the act itself and, in fact, articles 2 and 4 of the Convention seemed to point in the same direction.

24. With regard to the clarification requested concerning the Security of Pakistan Act of 1952 (ibid., para. 31), he questioned the fact that, because that Act did not contain any definition of "security", it could be interpreted as covering threats that included acts of racial discrimination. In his opinion, racial discrimination constituted a threat to public order, rather than to State security.

25. In connection with measures taken to implement article 7 of the Convention, as described in paragraphs 24 to 28, he expressed the hope that the next periodic report of Pakistan would contain more details so as to give a clearer picture of how information about the problems dealt with by the Committee was disseminated in the context of education.

26. Mr. BESSONOV said that the report did answer the questions which had been asked by members of the Committee in the course of consideration of the fifth periodic report (CERD/C/20/Add.15), thereby demonstrating that the Government of Pakistan was endeavouring to maintain a fruitful dialogue with the Committee. Generally speaking, the report was positive, and he appreciated the special attention that had been given to the measures to implement article 7 of the Convention. He attached particular importance to the section of the report dealing with the strong anti-racist foreign policy of Pakistan, with particular reference to the racist régime of South Africa. Indeed, Pakistan afforded certain material and financial assistance to peoples struggling for independence. Members of the Committee would also be familiar with the initiatives taken by the Government of Pakistan in relation to recent events in the Middle East.

27. He noted, however, that the legislation mentioned in the report had been drafted at least two years previously. In view of the magnitude of the changes that had taken place in Pakistan since then, he wished to know to what extent the report reflected the current situation with respect to constitutional measures and the implementation of the various rights mentioned. Compliance with article 5 of the Convention required more than a mere statement that a right was embodied in a constitution or a law. There must be genuine implementation of all the various social, political, economic and religious rights. He therefore sought confirmation that the rights referred to in the report were being fully and freely exercised in practice. It was his impression that the somewhat broad formulations might perhaps conceal certain arbitrary measures. He had certain misgivings on the subject, and therefore associated himself with the question posed by Mrs. Sadiq Ali as to the manner of determining whether or not an offence had been committed, for instance with respect to the dissemination of ideas directed against certain groups of people. In other words, he wished to know how the term "reasonable grounds", used in the exception to section 505 of the Penal Code, quoted in paragraph 9 of the report, was defined. His evaluation of Pakistan's success in implementing the Convention would hinge on the replies received on those basic points.

28. Mr. DECHEZELLES said that he had no wish to criticize the report, but would like clarification on what remedy was available to an individual victim of a discriminatory act, in particular to redress a wrong and, where appropriate, to obtain damages.

(Mr. Dechezelles)

29. He joined Mr. Partsch in paying tribute to the Government of Pakistan for the measures it had taken under article 4 of the Convention, although they appeared to be confined to the dissemination of propaganda and the maintenance of public order. While the safeguarding of public order was a praiseworthy aim, he was interested in knowing what right of redress was open to the individual. The penal sanctions appeared to apply only in the case of incitement against groups, not to any cases of defamation or slander of an individual on the basis of racial or ethnic origin. There should at least be safeguards providing for adequate redress before the civil courts, in compliance with article 6 of the Convention.

30. Mr. DEVETAK sought clarification with respect to minorities in Pakistan. The second periodic report (CERD/C/R.30/Add.14) had referred to the right of minorities to preserve their culture, script and language, but none of the subsequent reports seemed to have given any further details as to how that right was being implemented. Likewise, he found no information on the Ahmadi minority mentioned in the initial report (CERD/C/R.3/Add.10), or on the work of the Ministry of Minority Affairs, and the advisory councils and cultural councils mentioned in the second report and in the fourth report (CERD/C/R.90/Add.22). He wondered whether those various institutions were still in operation and, if so, why no information on their current activities had been provided in the sixth periodic report.

31. Finally, he congratulated the Government of Pakistan on its report and its continued efforts to maintain a dialogue with the Committee.

32. Mr. TENEKIDES noted that the statistics provided in the report were based on religious or linguistic criteria. He hoped that the next report would contain statistics on the ethnic composition of Pakistan, which was the Committee's major concern.

33. He associated himself with the comments made by Mr. Partsch on the subject of the Security of Pakistan Act and the lack of a definition of the term "security". As he knew from experience, such acts were two-edged swords which could be turned against the citizens of a State. In view of the statement that the Act could be interpreted to include cases of racial discrimination, it would be interesting to have details of any court decision which provided an instance of the use of the Act in such cases. Evidence would also be welcomed of the effective implementation of the various rights mentioned in article 5 of the Convention, particularly political rights, including participation in elections, the participation of the various religious or linguistic groups in public affairs, and their equal right of access to the civil service. Nor did the report appear to contain any information on the right to freedom of thought, conscience and expression, or on the right to form and join trade unions. He also wondered how the right of equal access to employment was being observed, in view of the fact the Pakistan had not adhered to the ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation.

34. However, he noted that the Government of Pakistan maintained its firm resolve to co-operate with the Committee and to pursue its efforts to perfect its laws and practices in accordance with its obligations under the Convention.

35. Mr. NETTEL referred to section 505 of the Pakistan Penal Code and to the exception to that section, mentioned in paragraph 9 of the report. Apparently, the Pakistan Penal Code did not consider it an offence if the person making, publishing or circulating the statement, rumour or report had reasonable grounds

(Mr. Nettel)

for believing that the statement, rumour or report was true. Other speakers had also asked who would be the arbiter of the truthfulness of the rumour or statement. As far as he was concerned, the question of good faith and intent did not enter into consideration in the implementation of article 4 (a) of the Convention. Indeed, in the sixth preambular paragraph of the Convention, States parties declared that they were convinced that there was no justification for racial discrimination, in theory or in practice, anywhere. At the time of drafting the Convention, the matter had been discussed at length and scientific theories regarding racial superiority had been totally rejected. Therefore, by definition, any statement, rumour or report based on claims to racial superiority could not be true. As far as he was concerned, the exception to section 505 of the Pakistan Penal Code ran directly counter to the basic spirit of the Convention.

36. Mr. AHMAD (Pakistan) said that he would endeavour to answer in general terms the questions that had been asked and that his Government would provide more specific replies in its next periodic report.

37. The national language of Pakistan was Urdu. The regional languages were, however, spoken and fully maintained in their respective areas. The local languages were used as the medium of instruction at lower levels in schools, but Urdu was a compulsory subject. In addition, students had the option of studying additional foreign languages such as English.

38. The Sikh population was perhaps included under the category of "others" in the population breakdown given in paragraph 3 of the report. He wished to stress that the members of the Shiah sect were Moslems and as such were included under that heading. In regard to the impact of the review of national legislation referred to in paragraphs 11 and 12 of the report, he said that the Islamic laws were applicable to Muslims alone. Both Islamic and modern laws were currently being applied to repress crime.

39. With regard to the phrase "subject to any reasonable restrictions imposed by law" which appeared in several of the laws cited in the report, he said that such restrictions were naturally determined by the major factors which prevailed in all countries of the world. While individual rights and freedoms were guaranteed by the Government, there were always limits. Reasonable restrictions commenced at the point where an individual's freedom encroached upon the freedom of others.

40. The exception to section 505 of the Penal Code was to be determined by the courts. That was in keeping with the mandate of an independent judiciary, which was responsible for the application and interpretation of the laws.

41. Detailed information on the role and functions of the Council of Islamic Ideology would be made available in the next periodic report. However, he emphasized that there was no conflict between that Council and the Permanent Law Reform Commission: the two bodies had separate and distinct mandates.

42. The study of Islamiyat (Islamic studies) was compulsory for all Moslem students, but not for non-Moslems. As to the need for intercommunal education to promote understanding of other religions, he stated that the teaching of Islam itself embodied respect for other religious systems.

(Mr. Ahmad, Pakistan)

43. He said that the answer to Mr. Valencia Rodriguez's question concerning equality in education could be found in the report. Further details on that matter would be provided in the next report. There was no discrimination whatsoever in making educational facilities available to the citizens of Pakistan. There was complete equality without distinction as to caste, creed, colour or religion.

44. With regard to the dissemination of information on the purposes and objectives of the Convention, he pointed out that Pakistan was complying fully with that requirement, as evidenced by its regular observance of international days of solidarity with the struggle against apartheid and racial discrimination. The people fully participated in such observances and the Head of State regularly issued statements on such occasions reaffirming Pakistan's anti-racist stand and its solidarity with the international struggle against apartheid and minority rule.

45. The Security of Pakistan Act, to which a number of speakers had referred, did not contain a specific definition of the term "security". The term was admittedly vague, but he assured the Committee that the Act was applied in a way that was fully consistent with the aims of the Convention.

46. His Government would provide details concerning school curricula, as requested by Mr. Partsch. If the Committee wished to receive even more detailed information, the Government could make available to it the syllabuses in use. He emphasized that there were no problems of racial discrimination in the school system.

47. With reference to Mr. Bessonov's question concerning the changes in Pakistan in the past two years, he said that they had been mainly political and in no way affected the extent or availability of constitutional guarantees of the fundamental rights of citizens. The report reflected the current situation in all areas of interest to the Committee under its mandate. Political and civil rights were freely exercised, perhaps more than in several other States. The judicial system was functioning in a fully normal fashion. All institutions were intact; political changes had had no effect on them. However, those political changes were normal in every country which had the right to choose a political system that suited its people and did not have to import political systems from abroad.

48. Replying to questions by Mr. Dechezelles, he said that the right of redress was inherent in the judicial system, with no substantive differences from the systems prevailing in most other countries. Although the substantive portion of section 505 of the Pakistan Penal Code dealt with problems of public law and order, paragraphs 1 (c) and 2 also covered situations where communal problems were likely to arise.

49. The status of the minorities, referred to by Mr. Devetak, had not been dealt with explicitly in the current report in order to avoid repetition of material contained in previous reports. The Ahmadis constituted a minority in Pakistan but their figures had not been indicated in the sixth periodic report because the population figures it contained were based on the census of 1972. The required information could, however, be reflected in the next report provided a new census has been taken in the interval.

50. The status of such groups continued to be defined under legislative measures and their interests and rights were protected and promoted under constitutional guarantees. New information as to the size of the minorities would be available

(Mr. Ahmad, Pakistan)

when the next census was completed. Regional languages were protected and individuals of any ethnic group continued to enjoy the right to free education without discrimination. The seventh periodic report would also contain any new information available concerning the activities of the advisory councils and cultural councils referred to in previous reports.

51. Replying to Mr. Tenekides' question on the scope of the Security of Pakistan Act, he said that the intent of the Act was to provide for remedial measures to deal with acts prejudicial to the defence, external affairs and security of Pakistan. The Act was also applicable against cases of racial discrimination because, as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, Pakistan had assumed an international obligation which formed an integral part of its foreign policy. Any act prejudicial or detrimental to that policy - in the current case the obligation to eliminate racial discrimination - would therefore be deemed to be detrimental to the security of Pakistan and would be dealt with as such under the Act. Freedom of religion and other rights referred to in article 5, subparagraphs (c) and (d), of the Convention, were guaranteed under the Constitution with certain justifiable limits, which were not motivated by factors relating to racial discrimination. Replying to the question raised by Mr. Tenekides about the availability of fundamental rights, he said that those rights were guaranteed by the Constitution and referred in that regard to articles 17, 18 and 19. As an active member of the ILO, Pakistan had established complete equality in employment with no discrimination on the basis of race, colour, creed and ethnic origin.

52. With reference to Mr. Nettel's question as to who could judge the exception to section 505 of the Pakistan Penal Code referred to in paragraph 9 of the report, he reiterated that the judiciary would perform that task since it was responsible for the application and interpretation of the laws. The judiciary would naturally require reasonable evidence to satisfy itself as to whether or not an act could be exempted from the application of section 505 on the grounds of "good faith and intent". He promised, however, that specific information on that point, which had also been raised by other members, would be furnished in the next report.

53. The CHAIRMAN asked the representative of Pakistan to bring to the attention of his Government the revised general guidelines adopted by the Committee at its twenty-first session concerning the form and content of reports by States parties under article 9 of the Convention (CERD/C/70). 1/ These guidelines should be borne in mind when preparing the next periodic report.

Mr. Ahmad withdrew.

Sixth periodic report of Tunisia (CERD/C/66/Add.11)

At the invitation of the Chairman, Mr. Ounaies (Tunisia) took a place at the Committee table.

54. Mr. OUNAIES (Tunisia) said that the guiding principles followed by Tunisia had remained constant since the country attained independence in 1956, and the same traditions had been evident in Tunisian education and culture for much longer than

1/ For the final text, see Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 18 (A/35/18), annex IV.

(Mr. Ounaies, Tunisia)

that: since the emergency of Al-Oayrawan as a centre of civilization and learning over 12 centuries ago. Tunisian law drew on the Islamic code, and under Tunisian legislation the freedom of the citizen and complete equality of non-citizens before the law were assured. The country's tradition of tolerance was reflected clearly in Tunisia's ratification of all conventions dealing with the elimination of racial discrimination; the Committee should note that, when ratified, international instruments automatically took precedence over Tunisian domestic legislation.

55. Tunisia had instituted a permanent administrative tribunal as the chief organ of the State Council, to deal with all disputes between individuals and the State; among its private organizations it numbered a League of Human Rights, established in 1977, which would act on behalf of anyone who applied to it for help. The country's broadcasting and information media were numerous, and represented many different political opinions.

56. Those who visited Tunisia, and returned again and again, could attest to the complete lack of xenophobia in the country - it was perhaps indicative that the tourist industry had increased markedly in recent years. The small number of foreigners - about 2 per cent of the population - permanently living in the country was, perhaps, more a reflection of economic constraints than any sign of intolerance. Tunisia's unique mixture of different races and cultures meant that there was no consistent pattern of racial discrimination of any kind within the country.

57. Mr. VALENCIA RODRIGUEZ said that the information just presented by the Tunisian representative should have formed the sixth periodic report of that country, instead of the rather uninformative document the Committee had before it. Previous reports had provided some details concerning Tunisian legislation, and the Committee was aware that Islam prohibited any kind of racial discrimination. But of all the questions the Committee had asked during its consideration of previous reports, only one, concerning Act No. 75-32 promulgating the Press Code, had received any kind of answer. It was to be hoped that future reports from Tunisia would be more instructive.

58. Mrs. SADIQ ALI said it was disheartening to receive so short a report from a country such as Tunisia. The Tunisian Government should perhaps bear in mind that, when the Committee asked questions, its intention was not necessarily hostile - often it needed information the better to carry out its work. The Committee was very appreciative of President Bourguiba's enlightened views on human rights and the freedoms of trade unions, but racial discrimination could not be viewed solely in such narrow terms. The Committee would like to receive information on the changing political rights of Tunisian citizens as the country evolved; to hear of the freedoms enjoyed by students, such as their right, if any, to set up their own autonomous bodies; to know, since Tunisia was recognized to be a heterogeneous and liberal country, whether it had received any significant number of refugees and, if so, what the Government's policy towards refugees was; and, in view of the number of Tunisians who emigrated to Europe, to receive the texts of the regulations governing freedom of movement in the country.

59. She would also appreciate information on the Government's policy towards the Berbers, minority Muslim sects, and the small Jewish population which she believed lived in Tunisia.

60. Mr. INGLÉS welcomed the presence of a Tunisian representative at the Committee's discussion of the Tunisian report, and suggested that the questions asked at previous sessions, when no representative had been present, might now receive answers.

61. He was sure there were excellent grounds for Tunisia's assertion that it had amply fulfilled the expectations of the international community, but the Committee's task was to reach a conclusion on the basis of hard information supplied to it by the reporting States. For example, he had examined all the previous reports of Tunisia and found no reference to legislation having a bearing on article 4 of the Convention, with the exception of the Press Code. It was true that the fifth report had referred to penalties for incitement to racial hatred but racial discrimination did not necessarily exist only where there was racial hatred, and the Committee's task was to determine whether there was discrimination, regardless of its cause. He wondered, therefore, whether the Tunisian Government envisaged enacting legislation in order to comply with its obligations under article 4 of the Convention.

62. Mr. TENEKIDES said he could not quite accept the assertion that, since Tunisia had never experienced racial discrimination, it had complied fully with the requirements of the Convention. The Committee had always maintained that States parties must enact legislation, even if they had no racial problem, in order to meet the requirements of the Convention.

63. Mr. GOUNDIAM observed that if international obligations took precedence over Tunisian domestic law, the Committee could assume that Tunisian courts already applied the provisions of the Convention. Some parts of the Convention, however, could not be applied so simply: they needed to be couched in proper legislative terms. The Committee should appeal to the Tunisian Government to take the matter in hand.

64. From personal experience he could say that the mixture of races in Tunisia was a very effective impediment to racism; he wondered, however, whether some small racial groups might not have escaped the mixing process and retained their individual identity in Tunisia, as in other countries.

65. In conclusion, he asked for details of the composition of the League of Human Rights, the areas in which it was involved and the activities in which it engaged.

66. Mr. DECHEZELLES said that he could not fault the introductory statement made by the Tunisian representative. Personally, he had nothing but praise for Tunisia, and was quite prepared to believe that no racial discrimination existed there.

The meeting rose at 6.05 p.m.