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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Report of the Group of Three established under the Convention

Chairman/Rapporteur: Mr. Samba Cor Konate (Senegal)

I. INTRODUCTION

1. The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted by the General Assembly in resolution 3068 (XXVIII) of 30 November 1973, entered into force on 18 July 1976, on the thirtieth day after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. As at 31 December 1985, there were 82 States parties to the Convention (see E/CN.4/1986/29, annex I).
2. Under article VII of the Convention, the States parties undertake to submit periodic reports to the Group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention.
3. In accordance with article IX of the Convention, the Chairman of the Commission on Human Rights is authorized to appoint a group consisting of three members of the Commission, who are also representatives of States parties to the Convention, to consider reports submitted by States parties in accordance with article VII. The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission, to consider the reports submitted in accordance with article VII.
4. In accordance with article IX of the Convention and General Assembly resolution 31/80, the Chairman of the forty-first session of the Commission appointed the representatives of the German Democratic Republic, Nicaragua and Senegal as members of the Group.
5. By its resolution 1985/10 of 26 February 1985, the Commission decided, inter alia, that the Group of three members of the Commission appointed in accordance with article IX of the Convention should meet for a period of no more than five days before the forty-second session of the Commission to consider the reports submitted by States parties in accordance with article VII, commended those States parties that had submitted their reports, urged those States parties that had not yet done so to submit their reports as soon as possible, and reiterated its recommendation that States parties should take full account, when submitting their reports, of the guidelines laid down by the Group in 1978 concerning the form and contents of reports (see E/CN.4/1286, annex).

II. ORGANIZATION OF THE 1986 SESSION

A. Attendance

6. The Group held its ninth (1986) session at the United Nations Office at Geneva from 27 to 31 January 1986. The session was opened by the Deputy-Director of the Centre for Human Rights. The Group's membership for the session was as follows:

German Democratic Republic	Mr. Gerhard Richter
Nicaragua	Mr. Norman Miranda Castillo
Senegal	Mr. Samba Cor Konate

B. Election of officers

7. At its meeting held on 27 January 1986, the Group elected Mr. Sambo Cor Konate as Chairman/Rapporteur.

C. Agenda

8. At its meeting held on 27 January 1986, the Group considered the provisional agenda (E/CN.4/AC.33/1986/L.1) submitted by the Secretary-General, and adopted the following items as the agenda of its 1986 session:

1. Opening of the session by the representative of the Secretary-General.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of reports submitted by States parties under article VII of the Convention.
5. Consideration of the actions of transnational corporations which operate in South Africa, in accordance with Commission resolution 1985/10.
6. Report of the Group to the Commission on Human Rights.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE VII OF THE CONVENTION

9. The Group had before it the following documents: (i) a note by the Secretary-General (E/CN.4/1986/29) concerning the status of the Convention and the submission of reports by States parties under article VII of the Convention and (ii) reports submitted after the forty-first session of the Commission on Human Rights by Peru (E/CN.4/1986/29/Add.1), Suriname (E/CN.4/1986/29/Add.2), Ecuador (E/CN.4/1986/29/Add.3), Gabon (E/CN.4/1986/29/Add.4), German Democratic Republic (E/CN.4/1986/29/Add.5), Iraq (E/CN.4/1986/29/Add.6), Syrian Arab Republic (E/CN.4/1986/29/Add.7) and Czechoslovakia (E/CN.4/1986/29/Add.8).

10. The Group undertook the examination of each report in the presence of the representatives of the reporting States who had been invited to attend the meetings of the Group in accordance with the recommendations made by the Group since its 1979 session.

Peru

11. The second periodic report of Peru was introduced by the representative of the State party, who pointed out that in Peru apartheid was considered a crime against humanity, since, in accordance with the Peruvian Constitution, the Convention was part of the national law. He mentioned other provisions of the Constitution and laws which prohibited discrimination in all its forms. In this respect, he pointed out that Peru supported all decisions of the United Nations aimed at prevention, punishment and eradication of the system of apartheid of the Government of South Africa. He further stated that Peru vehemently condemned the execution of Benjamin Moloise, the South African black poet, on 18 October 1985, despite international appeal for stay of execution. Finally, the representative informed the Group that in December 1985 Peru cancelled consular services in Cape Town and requested the Government of South Africa to do the same for their services in Lima.

12. The Group commended the representative of the State party for the presentation of the report and noted with satisfaction that the very comprehensive report followed the general guidelines of the Group in form and content. The view of the Government was sought on the extent and nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa. In reply to that question, the representative stated that there was no investment by Peru in South Africa and that Peruvian companies did not deal with that country.

Suriname

13. The initial report of Suriname was considered without the participation of a Government representative. The Group took note of the information contained in the report, in particular the reference to a decree concerning basic rights and duties of the population of Suriname (Decree 411.1982 No. 63) which entered into force on 30 March 1982 and contained provisions regarding equality of all citizens.

14. The Group requested the Government of Suriname to include in its next report concrete provisions of its legislation, as well as judicial, administrative or other measures that were adopted to give effect to the provisions of the Convention. Finally, the Group expressed the hope that the general guidelines concerning the form and contents of reports would be taken into account by the Government of Suriname when submitting its future reports and that the Government would consider sending a representative to participate in the consideration of its reports.

Ecuador

15. The second periodic report of Ecuador was introduced by the representative of the reporting State. She emphasized the importance of article 4 of the Constitution which provided that the Ecuadorian State condemned all forms of colonialism, neo-colonialism, racial discrimination and segregation, and recognized the right of all peoples to free themselves from those oppressive systems. She highlighted other relevant provisions of the Ecuadorian Constitution guaranteeing the principles of equality and non-discrimination and prohibiting activities incompatible with the objectives of the people as defined in the Constitution. She stated that in the event of a violation of the pertinent constitutional provisions, any citizen affected could have recourse, without distinction, either to the courts and tribunal of the Republic or to the

Committee on the Elimination of Racial Discrimination, whose competence was recognized by Ecuador through a special declaration made on 21 March 1977. The Group took note with appreciation of the information contained in the report of Ecuador. More information was requested regarding the measures that were taken since the submission of the first report. In reply to a question by a member of the Group, the representative stated that the ratification of the Convention by the Congress meant that its provisions had become part of the domestic law of her country.

Gabon

16. The initial report of Gabon was introduced by the representative of the reporting State, who stated that provisions of the Constitution as well as of the Penal Code prohibited all acts of racial, ethnic, religious or cultural discrimination and regionalist propaganda in Gabon. She pointed out that Gabon supported and participated actively in the Solidarity Fund instituted by the OAU Liberation Committee, and that Gabon had made a very substantial financial contribution to this fund. She further stated that Gabon had no diplomatic or cultural ties with South Africa, and that the mass media continuously informed the public of the problems of apartheid.

17. The Group noted with approval the initial report of Gabon and expressed the view that the next report should follow more closely the guidelines. Clarifications were sought as to whether the curricula of schools included references to the problem of apartheid and on the view of the Government of Gabon on the extent and nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa. In her reply, the representative stated that the schools' text books had been revised in the 1970s, but the question of apartheid as a crime against humanity was not specifically provided for; however, article 1 of the Constitution outlawed racism. The representative of Gabon undertook to transmit the Group's questions to her Government.

German Democratic Republic

18. The fourth periodic report of the German Democratic Republic was introduced by the representative of the reporting State. He underlined that his country resolutely condemned the policy of racism and racial segregation pursued by the ruling circles of South Africa and expressed unconditional support for the peoples struggling for independence and self-determination. As it was pointed out in the earlier reports, his Government took the necessary legislative and other measures to ensure punishment of the crime of apartheid. The German Democratic Republic fully endorsed the pertinent United Nations decisions including those which denounced the complicity of transnational corporations and banks with the régime of apartheid. It regards it extremely important that the Commission on Human Rights noted that the responsibility for committing the crime of apartheid also rested with transnational corporations collaborating with South Africa and gave a strong impetus to strengthening the international front against apartheid.

19. In reply to questions by members of the Group, the representative referred to data showing the support of his country to national liberation movements in southern Africa, and stated, in particular, that in 1985 the voluntary contributions from the population of the German Democratic Republic amounted to 200 million marks, and that over the past five years solidarity consignments amounting to more than 1 billion marks were dispatched. An important part of

those donations were used for the support to the peoples in southern Africa and their liberation movements. In 1985 hundreds of young members of those liberation movements received their skilled workers' certificate in the German Democratic Republic. In co-operation with the Finnish Peace Committee, a children's village with kindergarten, nursery and school facilities was established in a SWAPO refugee camp in the People's Republic of Angola.

20. The report of the German Democratic Republic was highly commended by the Group for the comprehensive and valuable information contained therein, and appreciation was expressed for the additional information submitted by the representative. The Group also expressed satisfaction for the substantial material assistance to national liberation movements fighting against the apartheid régime.

Iraq

21. The fourth periodic report of Iraq was introduced by the representative of the State party, who pointed out that the report had been prepared in accordance with the general guidelines regarding the form and contents of reports. He stated that the system of apartheid stands against everything that Iraq and the Iraqi people stand for, and that in this respect Iraq shared the view that the crime of apartheid is a form of genocide. He pointed out that all Iraqi educational curricula carried information on the problems of apartheid.

22. The Group expressed its appreciation for the comprehensive report which illustrated clearly the steps taken by the reporting State in order to combat the evils of apartheid. Clarification was sought on the nature and extent of the responsibility of transnational corporations for the continued existence of the crime of apartheid in South Africa. In replying to this question he stated that these corporations should be regarded as aiding and abetting the commission of the crime of apartheid and that therefore all steps should be taken to ensure that they do not have dealings, in particular in the field of nuclear technology, with South Africa.

Syrian Arab Republic

23. The fourth periodic report of the Syrian Arab Republic was introduced by the representative of the State party, who emphasized the link and collaboration between Israel and South Africa. The Group expressed its satisfaction at the presentation of the report and noted that the report provided supplementary information to what was contained in the third periodic report of the Syrian Arab Republic. The view of the Government of the Syrian Arab Republic was sought on the nature and extent of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa. In reply, the representative stated that the Government of the Syrian Arab Republic was of the view that the actions of transnational corporations which operated in South Africa helped to perpetuate the system of apartheid in that country and in Namibia and that representations should be made to those States which have jurisdiction over transnational corporations operating in South Africa and in Namibia to halt the activities of those corporations.

Czechoslovakia

24. The representative of Czechoslovakia introduced the third periodic report of his country, condemning the latest manifestations of the crime of apartheid which led to brutal repression and indiscriminate torture and killing of

innocent black people. He stated that South Africa was a military police régime which constantly undertook aggressive actions against front-line States. Thus, it constituted a threat to international peace as a whole and to peace on the African continent in particular. Strict adherence to relevant United Nations resolutions and the implementation of the Programme of Action against apartheid would contribute to its elimination. As required by the United Nations resolutions, Czechoslovakia has severed all diplomatic, economic, cultural and all other relations with South Africa.

25. Czechoslovakia was of the opinion that the United Nations Security Council should adopt, in keeping with the Charter of the United Nations, appropriate measures including the imposition of sanctions under its Chapter VII of the Charter. His Government, which had signed the International Convention on the Suppression and Punishment of the Crime of Apartheid as far back as 1975, was implementing all its provisions consistently and faithfully. It called on the States which had not yet done so, particularly the advanced Western States, to accede to the Convention and thus to contribute to the final and definitive elimination of the criminal system of apartheid.

26. In reply to the question raised, the representative referred to articles 109, 196, 198 and 221 of the Penal Code of his country under which severe punishments were imposed for the crimes connected with racial, national and religious intolerance as well as for the propaganda and agitation to racial hatred. Czechoslovakia took part in the formulation of, and supported, decisions of the United Nations bodies directed against the arming of South Africa, its acts of aggression against neighbouring countries, and against transnational corporations whose operations come under the crime of apartheid. The Group of Three supported the opinion about the necessity of imposing sanctions against South Africa under Chapter VII of the United Nations Charter, and expressed appreciation for the comprehensive report of the Government of Czechoslovakia.

IV. CONSIDERATION OF THE ACTIONS OF TRANSNATIONAL CORPORATIONS WHICH OPERATE IN SOUTH AFRICA

27. In accordance with the request contained in Commission on Human Rights resolution 1985/10 the Group of Three continued to consider whether the actions of transnational corporations operating in South Africa came under the definition of the crime of apartheid and whether or not some legal actions could be taken under the Convention, and, in the light of the views expressed by States parties to the Convention, examined the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa.

28. The Group commended the States parties which have submitted their views either in their periodic reports or separately; and called upon those which have not yet submitted their views, to do so as soon as possible. The Group felt that further examination of the matter was needed and that the views and opinions of the States parties to the Convention on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa would be of the greatest usefulness.

29. The Group noted that several United Nations organs had repeatedly drawn the attention of the international community to the close interconnection existing between the activities of transnational corporations operating in South Africa and Namibia and the persistence of South Africa's racist régime and apartheid, as well as the position of the home countries of those corporations

vis-à-vis the racist régime of South Africa. The Group emphasized the position of the General Assembly, expressed in resolution 40/27, that the continued collaboration of certain States and transnational corporations with the racist régime of South Africa in the political, economic, military and other fields is an encouragement to the intensification of its odious policy of apartheid.

30. The Group recalled that in its resolution 35/39, the General Assembly had for the first time called upon the Commission on Human Rights to take account, in further updating the list of perpetrators of the crime of apartheid, of those resolutions and instruments which, inter alia, denounce the complicity of transnational corporations and banks with the régime of apartheid. The Group taking into account the report of Mr. Khalifa to the Sub-Commission noted with preoccupation the extent and the number of institutions which continue to undertake various activities in the economy of South Africa. It also recognized the dimension and seriousness that the development of such activities is taking, as indicated in the conclusions of the report of the Special Committee against Apartheid (A/40/22).

31. The Group held that the activities designed to identify such transnational corporations and banks which participate in racist exploitation in South Africa and Namibia or render assistance in some form or another to the apartheid régime are extremely important with a view to registering and securing assets that can be used to settle the compensation claims of the people of South Africa and Namibia in general and the victims of the apartheid régime in particular, as well as of the States directly affected by South African acts of aggression.

32. The Group rejects as completely unfounded the assertion that the action of transnational corporations operating in South Africa and close co-operation between certain countries and the racist régime of South Africa in the political, economic, military and other spheres are helping to improve the critical situation of the overwhelming majority of the population of that country and contribute gradually to making the criminal system of apartheid more human.

33. The economic, technological and military collaboration and support provided by the international and national monopolies and some countries to the South African authorities strengthens the criminal régime of apartheid and helps to perpetuate the oppression of the African majority and to heighten the repression against those fighting for civil, political, economic and other rights. The tragic events which have recently once more shown the repressive racist régime's true nature are eloquent proof that political, economic, military and other relations with the racist régime encourage it to persist in its wanton acts of aggression and its suppression of the aspirations of people to self-determination and independence. The Group was of the opinion that legal action against transnational corporations and banks on account of their collaboration with South Africa would be greatly conducive to the struggle of the people of South Africa and Namibia against the racist régime, as well as to the efforts of the United Nations to eliminate the policy of apartheid.

34. In this context the Group pointed out that in article I, paragraph 2, of the Convention, the States parties declare criminal also organizations and institutions committing the crime of apartheid. The Group held the view that, no doubt, that provision was applicable to transnational corporations.

35. The Group believes that by continuing and maintaining their activities in South Africa, transnational corporations frustrate all efforts aimed at

implementing the decisions of the international community to prevent the perpetration of apartheid, and the application of the sanctions taken against the racist régime.

36. The Group, therefore, reached the conclusion that by their complicity these transnational corporations, from the juridical point of view and in conformity with article III(b) of the International Convention on the Suppression and Punishment of the Crime of Apartheid, must be considered accomplices in the crime of apartheid and must be prosecuted for their responsibility in the continuation of this crime.

37. The Group expressed the view that an element of the responsibility of transnational corporations should be their liability for damage caused to the people of South Africa or Namibia when the apartheid régime will have been eliminated or when Namibia will have gained independence. It recalled that the existence of a right to claim compensation in connection with the crime of apartheid has expressly been affirmed on several occasions by the United Nations resolutions as well as in the Decree No. 1 of the United Nations Council for Namibia.

38. The Group took note of the initiatives undertaken by some Western countries concerning the activities of the corporations under their jurisdiction having interests in South Africa. Nevertheless, the Group thinks that the measures of disinvestment which have been taken, should be accompanied, in order to be efficient, by the application of effective sanctions to be decided by the Security Council.

39. The Group is of the opinion that collaboration of States having jurisdiction over transnational corporations which undertake activities in South Africa, is indispensable for the implementation of the sanctions against the apartheid régime.

V. CONCLUSIONS AND RECOMMENDATIONS

40. The Group of Three expresses its appreciation to the representatives of the reporting States for their presence at its meetings and for their participation in its work and notes with appreciation that with one exception, all the reports considered by the Group at the current session were introduced by the representatives of the reporting States.

41. The Group commends those States parties which have submitted periodic reports. It notes with concern that more than half of the States parties to the Convention have not submitted any report and urges in particular those States parties which have not yet submitted their initial reports, to do so as soon as possible, as required under article VII of the Convention.

42. The Group further notes with concern that, as at 1 February 1986, 136 reports were overdue under the International Convention on the Suppression and Punishment of the Crime of Apartheid, and strongly urges the States parties concerned to fulfil their reporting obligations. In accordance with General Assembly resolution 40/116, the Group requests the Secretary-General, through the Commission on Human Rights, to invite States parties concerned to indicate, if they so wish, the reasons for their difficulties in complying with their reporting obligations, and their interest, if any, in technical advice and assistance with a view to better fulfilling their reporting obligations.

43. The Group reiterates its recommendation that the general guidelines regarding the form and contents of reports should be fully taken into account by all States parties when preparing their reports.

44. The Group expresses concern at the fact that as at 31 December 1985 only 82 States had become parties to the Convention. Convinced that the ratification of, or accession to, the Convention on a universal basis and the implementation of its provisions are necessary for its effectiveness, the Group recommends once again to the Commission on Human Rights that it should urge all States which have not yet done so to ratify or to accede to the Convention without delay, in particular those States which have jurisdiction over transnational corporations operating in South Africa and Namibia, and without whose co-operation such operations cannot be halted.

45. The Group calls upon States parties to provide in their reports all relevant information on the legislative, judicial and administrative measures they have adopted to give effect to the provisions of article IV of the Convention, or on the difficulties which they may have encountered in the implementation of that article.

46. The Group also calls upon States parties to provide in their reports more information on concrete cases in which measures to prosecute, bring to trial and punish persons responsible for, or accused of, the acts enumerated in article II of the Convention have been applied under their jurisdiction.

47. The Group proposes to States parties which have not yet done so to submit their views on the extent and the nature of the activities of transnational corporations in South Africa and their applicability to article III of the Convention.

48. The Group calls upon States parties to identify in their reports, where possible, individuals, organizations, institutions and representatives of States deemed responsible for the crimes enumerated in article II of the Convention, as well as those against whom legal proceedings have been undertaken by the States parties to the Convention, with a view to enabling the Commission to continue its progressive updating of the list referred to in article X of the Convention.

49. The Group took note with satisfaction of the decision to convene a World Conference on Sanctions against Racist South Africa, and requests the Commission on Human Rights to call on the States that have jurisdiction over transnational corporations operating in South Africa to participate actively at that conference.

50. The Group supports the suggestion to convene a session of the United Nations Security Council that would adopt appropriate measures, including sanctions under Chapter VII of the United Nations Charter, against the racist régime of South Africa.

51. The Group wishes to appeal once again to States parties, through the Commission on Human Rights, to strengthen their co-operation at the international level to implement fully, in accordance with the Charter of the United Nations, the decisions taken by the Security Council and other competent organs of the United Nations aimed at the prevention, suppression and punishment of the crime of apartheid, in accordance with article VI of the Convention.

52. The Group wishes to note that the crime of apartheid is a form of the crime of genocide, similar in nature to fascist and nazi crimes, and as such falls under the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Group recommends to the Commission on Human Rights to reflect this similarity in its respective resolutions as well as the fact that adherence to the International Convention on the Suppression and Punishment of the Crime of Apartheid is an indication of the implementation of the International Convention on the Prevention and Punishment of the Crime of Genocide.

53. The Group, recalling in particular paragraph 3 of General Assembly resolution 3068 (XXVIII) by which the Convention was adopted as well as General Assembly resolution 40/27, wishes once again to draw the attention of United Nations organs, specialized agencies and international and national non-governmental organizations to the need for stepping up their activities to enhance public awareness by denouncing the crimes committed by the racist régime of South Africa and to intensify their efforts, through appropriate channels, to disseminate information on the Convention and its implementation with a view to promoting further ratification of or accession to the Convention.

54. The Group wishes to express once again the importance of measures to be taken in the field of teaching and education for fuller implementation of the Convention and invites the States parties to include ample information on these measures in their reports.

55. The Group wishes to draw the attention of the States parties to the importance of article XI of the Convention and invites the States parties to include in their reports more information on their implementation of the provisions of this article.

56. The Group wishes to draw attention once again to the importance of strengthening the assistance given to the national liberation movements in southern Africa.

57. The Group wishes to recommend to the Commission on Human Rights that it requests the Secretary-General to invite once again the States parties to the Convention which have not yet done so to express their views on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa.

58. The Group wishes to recommend to the Commission on Human Rights that it request the Secretary-General to invite the States parties to the Convention, the specialized agencies and non-governmental organizations to provide the Commission on Human Rights with relevant information concerning the types of the crime of apartheid, as contained in article II of the Convention, committed by transnational corporations operating in South Africa.

VI. ADOPTION OF THE REPORT

59. At its meeting on 31 January 1986, the Group considered the draft report on the work of its 1986 session. The draft report, as revised during the discussion, was adopted unanimously.
