

486th meeting

Friday, 8 August 1980
at 5 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 the Philippines (CERD/C/66/Add.12 and CERD/C/66/Add.19) (concluded)

1. Mr. ORDÓÑEZ asked whether the Philippine President's power to issue presidential decrees binding on the legislature was absolute or subject to any form of checks and controls. Several articles of the Constitution as quoted in the report seemed to be at variance with presidential decrees. The Committee should also be told whether the autonomous regions referred to in the report could enact legislation that was not liable to revision or revocation by the President, for if they could not, their autonomy seemed questionable. He would be grateful if the representative of the Philippines would explain the current status of the law in that country.
2. Mr. INGLÉS observed that, under article XIII, section 5, of the 1973 Constitution, the Interim National Assembly was to establish a special court to deal with cases of corruption on the part of public officials and other abuses which could conceivably cover cases of racial discrimination, while under section 6 of the same article the Assembly was to establish an Ombudsman's office to investigate complaints and file charges against public officials. He wondered whether the special court and the Ombudsman had been appointed; whether the court had heard any criminal or civil cases relating to racial discrimination; and whether the Ombudsman had received any complaints about racial discrimination on the part of a person in public office.
3. Mr. YANGO (Philippines) said that the belief that the Philippines was under martial law was mistaken. The country was being ruled under a state of crisis government proclaimed by the President in 1971 under the terms of the 1935 Constitution then in force. Under crisis government, some freedoms - such as habeas corpus - could be suspended if necessary to maintain order, and military tribunals had been set up to deal with certain offences against peace and the State; but the Penal Code had not been suspended, and civilian authority was still recognized to take precedence over military authority. In proclaiming crisis government, the President had suspended the legislature and assumed both executive and legislative powers, but four years later the country had acquired a new legislative body in the form of the Interim National Assembly, elected, for the most part, by popular vote.
4. Meanwhile, the drafting of a constitution had been completed and the new Constitution, having been submitted to the populace for approval by referendum, had taken effect in January 1973. The new Constitution contained a bill of rights such as the Philippines had had since the end of the nineteenth century. The freedoms of the individual were nothing foreign to the Philippines; nor were civil and political rights, even if the State was exercising its sovereign right to weigh the consequences of adhering to the International Covenant on Civil and Political Rights before taking a decision on ratification.

(Mr. Yango, Philippines)

5. Under Presidential Decree No.1350-A, violations of the Convention were unlawful and penalties were provided for infringements, as the Committee had remarked. Concerning the status of that decision he drew attention to article XVII, section 3 (2), of the 1973 Constitution quoted on page 4 of the sixth periodic report (CERD/C/66/Add.12) which made it clear that presidential decrees would continue to hold good even after the abolition of crisis government until amended or repealed.

6. Both the special court to deal with abuses by public officials and the office of the Ombudsman had been set up. As the system worked in practice, the Ombudsman generally brought complaints of racial discrimination or actions based on racial discrimination to the attention of the court. He (Mr. Yango) was not in a position to say whether the court had actually heard such cases: the information would be provided in the seventh periodic report.

7. It had been the constant policy of the Philippine Government to promote regional autonomy, based on geographical rather than ethnic divisions, throughout the country. The State was divided into 12 regions, with the majority of Muslims concentrated in regions 9 and 12 in the south. Each region had its own executive council and regional legislative assembly, but he was unable to say what position they occupied vis-à-vis the central Government. The fact that the Tripoli Agreement of 23 December 1976 called for regional autonomy in the south of the Philippines should be considered in the light of the Government's general policy towards autonomy. As for the referendum held in April 1977 on the autonomy issue, he could not say whether it had been so organized as to deny participation to many Muslims - but the vast majority of the electorate in regions 9 and 12 had opted for autonomy in any case.

8. The seventh periodic report of the Philippines would contain the texts of presidential decrees relating especially to the Muslim population, such as those on Muslim personal laws, on religious holidays, and on the granting of amnesty for secessionists. It would also provide the text of the 1973 Constitution, which should allay many of the Committee's doubts as to the observance of the Convention.

Mr. Yango withdrew.

Second periodic report of Zaire (CERD/C/46/Add.4)

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

9. Mr. KAMANDA (Zaire) praised the work of the Committee in ensuring universal respect for the Convention, especially in the current ambiguous international climate. Zaire was convinced of the usefulness of the Committee's work and wished it every success.

10. In preparing the second periodic report of Zaire, an effort had been made to follow the guidelines set forth in article 9, paragraph 1, of the Convention and to respond to the observations made during the consideration of the first periodic report (CERD/C/25). His country was prepared to improve not only on the form of its periodic report but also on the implementation of the Convention in Zaire.

(Mr. Kamanda, Zaire)

11. He briefly outlined the history of his country, stressing that Zaire was one of the rare African countries that had truly experienced racial segregation, very similar to the policy of apartheid practised in South Africa. During the colonial period, the people of Zaire had been subjected to racism in every aspect of their lives and they had deeply felt the threat that represented to their human dignity.

12. Following independence, one of the main concerns had been to abolish racism and racial discrimination for ever, as could be seen in the judicial processes established and in the Constitution adopted, even before Zaire had become a party to the Convention. He expressed the hope that the Committee would consider his country's report from the historical perspective he had described.

Mr. Kamanda withdrew.

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

13. Mr. BALANDA (Zaire) said that the situation in Zaire with regard to the rights guaranteed under the Convention could be examined at both the international and national levels. At the international level, the first phase had been the pre-colonial period, during which the General Act of Berlin of 26 February 1885 and later the Decree of 20 February 1891 had granted equal rights to foreigners and nationals without distinction. He drew attention to the fact that the Decree of 20 February 1891 constituted the current Civil Code of Zaire but that during the colonial period the texts he had mentioned had remained a dead letter, at least in so far as the rights of the indigenous population were concerned.

14. Accordingly, with the end of the colonial period, Zaire had undertaken to protect the equality and freedom of the individual, without distinction as to race, colour, nationality, religious belief or philosophy, on the basis of the historical experience he had described earlier. In that connection, he drew attention to the Decree of 13 June 1960 (CERD/C/46/Add.4, section I(a) para.2) and to Ordinance-law No.66/342 of 7 June 1966 (*ibid.*, para.3). The latter added the expression "or by any other means", thus further strengthening the provisions of the Decree. Those two texts were essential in that they laid effective bases for the struggle against racial or ethnic discrimination and were among the measures adopted in implementation of article 2, paragraph (a) and (b), article 3 and article 4, paragraph (c) of the Convention.

15. As to political rights, while the enjoyment of such rights was the prerogative of nationals alone, foreigners could, without distinction, acquire Zairian nationality in accordance with the Act of 15 January 1972.

16. In Zaire, all foreigners who were duly authorized to live there enjoyed the same economic and social rights as nationals, particularly in connection with employment, except that they were required to obtain prior authorization in order to work. Foreign workers could also join trade unions under the same conditions as their Zairian colleagues. Moreover, foreigners could acquire both movable and immovable property and were free to set up companies and trading establishments under the same terms as nationals.

17. With regard to cultural rights, as President Senghor had emphasized, one aspect of the concept of "negritude" was the policy called "recourse to authenticity",

(Mr. Balanda, Zaire)

whereby Zaire encouraged the dissemination and development of examples of the culture of the various ethnic groups it comprised. Moreover, under cultural agreements signed with a number of States, cultural exchanges were being carried out, particularly among researchers, students and teachers. In that connection, he drew attention to the visits paid by Belgian university students with a view to familiarizing themselves with problems in Zaire. In his opinion, that was an especially good way of laying the basis for understanding and for fruitful exchanges among young people of the two States, as well as of combating prejudices of all kinds.

18. His country gave special attention to the situation of certain categories of foreigners, such as refugees, of whom there were currently more than 200,000 in Zaire. He observed that on 22 July 1953 Belgium, then administering Power of the Congo, had ratified the Convention relating to the Status of Refugees of 28 July 1951 and that the problem of refugees in Zaire was currently governed by the provisions of the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa.

19. Zaire also furnished assistance to the victims of apartheid and to all peoples fighting for their liberation from colonialism. In that connection, he noted that the headquarters of the anti-apartheid movement was situated in Zaire, which extended every facility necessary for the anti-apartheid committee to carry out its activities. Thanks to those activities, five African States had broken off air links with South Africa. Moreover, radio programmes designed to heighten people's awareness of the abominable crime of apartheid were broadcast from Zaire.

20. In the context of the struggle against colonialism, Zaire had never hesitated to supply all types of material assistance to liberation movements, some of which had their headquarters in his country.

21. Under the provisions of article 7 of the Convention, initiatives had been taken to promote the integration of foreigners with nationals. For example, the freedom to marry the person of one's choice was guaranteed under article 19 of the Constitution; and the Act of 15 January 1972 contained provisions concerning the naturalization of foreigners, and their right to choose a nationality.

22. However, all such efforts would only be successful if they were backed by a system of penalties and of effective recourse against those who violated the rights protected by the various types of legislation. In that connection, he referred to the provisions of articles 3 and 4 of the Decree of 13 June 1960 and to those of the Ordinance-law of 25 March 1960, in particular article 1, which prohibited all racist propaganda. He also drew attention to the penalties provided under article 3 of the Decree of 13 June 1960, mentioned earlier. In 1966, legislation had been adopted to strengthen measures to combat racism and racial hatred, both by extending the range of punishable acts and by imposing more severe penalties for the perpetrators of such acts. That effort was exemplified by the provisions of article 1 of Ordinance-law No.66/342 of 7 June 1966 which increased the penalties for acts of racial, ethnic, tribal or regional discrimination, hatred or aversion, particularly if such acts had been committed by a person vested with public authority. If such acts resulted in a breakdown of public order or other serious disturbance, the offender was liable to life imprisonment. Penalties were also provided for violations of guaranteed rights committed by an individual or by a group for example, under article 3 of the Ordinance-law No.66/342. Moreover, article 6 of the same Ordinance-law stipulated the penalties to which a person was liable, if during the

(Mr. Balanda, Zaire)

exercise of his functions, he learned of the existence of any prohibited racial or tribal association but failed to report that fact to the appropriate judicial authority.

23. In Zaire, individual rights were protected before the courts, even if the perpetrator of a violation was the State or one of its organs, as was apparent from the cases described in the final paragraphs of his country's second periodic report.

24. In conclusion, he reiterated Zaire's determination to supplement and improve its legislation with a view to implementing provisions that would further even more the struggle to combat racial discrimination, in accordance with the Convention.

25. Mrs. SADIQ ALI said that her country had shared with Zaire the common colonial experience and knew the difficulties, familiar to all developing countries, of establishing stable political structures. Zaire was a country with a complex ethnic structure comprising more than 200 groups, some of which often spilled over into neighbouring countries, a situation which had some international implications. Furthermore, Zaire had a commendable record of providing assistance and asylum to thousands of refugees and had ratified the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa. It would be valuable to have more information on Zaire's policy regarding the resettlement and repatriation of refugees, on the laws of extradition and on the tripartite agreement recently concluded between Zaire, Angola and Zambia dealing with, inter alia, political exiles. She inquired whether there had been a recent census of refugees. A related problem was the procedure for acquiring Zairian nationality. The second periodic report made reference in section IV, paragraph (a) to "certain conditions" which a foreign woman who had married a Zairian must fulfil in order to acquire her husband's nationality; she requested further information on that subject.

26. In the introduction to the report it was stated that freedom of conscience and the free exercise of all religious beliefs were subject to "restrictions which were essential for the maintenance of public order and security"; she requested further details on that point. Turning to economic rights, dealt with in section I.3 of the report, she asked for more information, including statistical data, concerning expropriations of property in the public interest. There was a problem in all third-world countries relating to infrastructure constraints and the relatively narrow horizontal range of economic benefits. She asked how budget allocation and distribution were handled; economic development must be made as even as possible, otherwise regional grievances and ethnic tension could arise. She also inquired whether economic decentralization was a goal of government policy and how ethnic balance would be reflected in the new structures.

27. Noting that Zaire had a single political party and attached great importance to the doctrine of "authenticity", she asked whether such a doctrine implied rejection of religious beliefs imported during the colonial period. Was there still religious freedom in Zaire and what data was available on the size and activities of the various religious groups? With reference to the discussion of Simon Kimbangu and his sect in section II(a) of the report, she asked why the Government had felt compelled to check its activities and why the sect seemed so popular.

28. She noted there seemed to be only one organization legally qualified to speak for workers in Zaire, which was not the intent of article 5 (e) (ii) of the Convention. She asked how the trade union exercised control over its members and

(Mrs. Sadiq Ali)

what its relation was to employers and the State. She hoped the next periodic report would contain information on Zaire's plans to reduce dependence on certain vestigial economic arrangements left over from the colonial period, in particular the rail system running to South Africa. She hoped for example that, in the context of the recently concluded quadripartite transportation pact, Zaire was attempting to reorganize its transportation and export-import arrangements.

29. Mr. LAMPTEY praised the second periodic report of Zaire, which showed that the Government had made a serious attempt to follow the guidelines of the Committee and to respond to questions raised during consideration of the first report. However, certain articles in the Convention still did not seem to be fully covered, in particular article 4. The ordinances cited in the report satisfied the requirements of the article only in part. With reference to political rights, he asked whether foreigners enjoyed the same rights as nationals with regard to education. The discussion of civil rights in section I(b)2 of the report suggested that in certain cases provided for by law forced or compulsory labour was not prohibited; those conditions should be specified. In the final part of section I of the report it could be seen that Zaire had adopted a rather innovative approach under which the President of the Judicial Council, namely, the Minister of Justice, could monitor the manner in which judicial decisions were rendered. Such a measure could, however, be a two-edged sword allowing the Minister of Justice, presumably appointed by the Head of Government, to interfere in the courts' actions in order to ensure that the courts' decisions were in line with the concepts and interests of the Government. Reference was made in section II of the report to the prosecution of Simon Kimbangu and his sect, which had apparently manifested racial or ethnic hatred or discrimination. Although the sect was apparently again active throughout the country, there was no reference to any further prosecution; it would be useful to have further details about the sect and the Government's views on its impact. In conclusion, he said that the measures described in section IV(a) of the report, which dealt mainly with the acquisition of Zairian nationality, were not in his view adequate to cover fully article 2, paragraph 1 (e), of the Convention.

30. Mr. NETTEL said he shared Mr. Lamptey's appraisal of the second periodic report of Zaire. Turning to the penal provisions mentioned in section I(a)3 of the report, he agreed that those provisions seemed tailored to prevent apartheid and other forms of racial segregation but felt that they did not cover some of the more subtle forms of racial discrimination covered by article 4 of the Convention.

31. Mr. VALENCIA RODRÍGUEZ commended the second periodic report of Zaire, noting that the country had managed to eliminate serious forms of racial segregation and discrimination that had existed in the colonial period. With reference to the political rights mentioned in section I of the report, in particular footnote 17, he asked for further details on the disqualification from certain rights that applied to naturalized Zairians. The discussion of the rights of refugees on page 18 of the report suggested that the refugees had free access to Zairian courts without the obligation to pay the cautio judicatum solvi ordinarily required of foreigners. He requested further information concerning the procedure under which other foreigners were obliged to pay such a deposit, the amounts involved, and the conditions under which it was retained or, conversely, returned. Although the report claimed there was no racial discrimination in Zaire with regard to political, civil and cultural rights, it would nevertheless be useful to have more information and specific data on any relevant legal provisions in accordance with the guidelines established by the Committee.

(Mr. Valencia Rodríguez)

32. The new information provided in the second periodic report filled some gaps regarding article 4 of the Convention which had been noted with respect to the first periodic report. It would be useful, however, to have more information on the cases of prosecution under article 75 bis of the Penal Code referred to in section II(a) of the report. He further noted that the terms of Ordinance-law No.66/342, under which the President of the Republic could dissolve certain clubs, associations and groups, was not entirely in line with the wording of article 4 (b) of the Convention. With reference to the discussion of article 95 of the Code of Procedures of the Supreme Court on page 9 of the report, he asked what provisions protected a person's right to legal remedies if the act in question had been committed by an individual and not by the authorities of the Republic. Furthermore, how was the compensation referred to in the article decided upon? It was also not clear how the term "exceptional damage" should be interpreted, and by whom, and what sort of measures article 95 had in mind.

33. There seemed to be little information in the report on measures adopted by Zaire to fulfil its obligations under article 7 of the Convention. He also requested information on the various cases cited on page 20 of the report in connection with the principle of individual freedom guaranteed by article 15 of the Constitution.

34. Mr. PARTSCH praised the second periodic report of Zaire, which was quite ample and covered the questions raised concerning the previous report. Before going into specific points he had one general comment to make, namely that the Government of Zaire had perhaps misunderstood the intent of article 2, paragraph 2, of the Convention, which referred to groups in specific, generally inferior, social situations. The paragraph authorized special measures favouring such groups in order to bring them up to the level of the main body of society. Furthermore, the Government might have misunderstood the intent of article 3 of the Convention, which was not, contrary to the statement made in section III(c) of the report, irrelevant to the Republic of Zaire. The reference in the article to "territories under their jurisdiction" did not mean dependent territories but simply the territory of the State itself. He noted that the discussion of Ordinance-law No.66/342 made no mention of financial support to racist organizations.

35. With reference to refugees, there seemed to be a slight contradiction in the statements that refugee aliens on the one hand enjoyed all civil rights while on the other hand their right to freedom of residence and movement could be restricted under certain conditions. The discussion in the last part of the report concerning measures taken in conformity with article 7 of the Convention did not provide information on educational measures involving, for instance, adults or on efforts to inform the population concerning the international protection of human rights and attempts to eliminate racial discrimination. The Committee had come to place increasing stress on educational measures and he encouraged the Government of Zaire to give a fuller account of such measures in its third periodic report.

36. Mr. GOUNDIAM said that the high level at which the Government of Zaire was represented before the Committee was evidence of the great importance it attached to the Committee's work.

37. A sombre picture had been painted of Zaire's past, but he was happy to note that it was trying to emancipate itself by an act of will, a conscious and deliberate return to its roots, through the theory of authenticity, which was not racism in reverse, but a contribution to world civilization. One good example was

(Mr. Goundiam)

the revival of the philosophy of Simon Kimbangu. He referred members of the Committee who might be interested in reading more about Kimbangu to Georges Balandier's book Sociologie actuelle de l'Afrique noire. He invited the representative of Zaire to provide fuller details on the direction that sect was currently taking.

38. The replies given to the questions raised by members of the Committee in the course of consideration of the initial report were entirely satisfactory, with the exception of the information on article 7 of the Convention. Greater stress should be laid on that in the following report.

39. With respect to refugees, he noted that there were still problems of freedom of movement, although it was recognized that the settlement of refugees, including the Lumpa sect, away from the frontiers of their countries of origin was in implementation of the provisions of the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa.

40. Mr. Lamptey had asked about the forced or compulsory labour mentioned in section I(b) 2 of the report. He assumed that it referred to a practice prevalent in other countries too, whereby citizens had a duty to assist their nation through community service. Such a practice was recognized by the ILO.

41. With regard to the judicial system, he was sure that there was a legal aid programme in Zaire, and he hoped that details would be provided in the next report; he was curious to know whether such legal aid extended to the Supreme Court in the cases mentioned in the fourth paragraph on page 9 of the second report. Further information would also be welcome on the means adopted for ensuring the constitutionality of laws and the criteria for the independence of judges. The independence of the judiciary was fundamental in economically and politically fragile developing countries. If justice collapsed, the whole system collapsed. It was mentioned on page 10 that a single case could be judged three times: he wondered whether this referred to recourse in the interest of the law, which had no effect on the outcome of a trial, or whether it was an ordinary recourse which could actually quash the verdict.

42. Zaire had all the necessary institutional and philosophical structures to implement the Convention, and he was sure that all the questions raised would be answered in the next report.

43. Mr. DECHEZELLES said that it had been a pleasure to hear the explanations given by the two Zairian jurists. The report marked a great step forward as compared with the initial report.

44. As a white man, he could only feel shame at hearing about the acts of segregation suffered by the people of Zaire in the past. It made him realize that everyone from the former European colonial Powers could be said to have been racist by proxy. He praised the honest admission by Zaire that there were other forms of racism as well as that practised by whites against blacks. He was more and more convinced that it was only by a continual, long-term effort to educate people, that it would be possible to eliminate, or at least attenuate, the effects of a racism which was part of the human condition.

45. Mr. BESSONOV said that he had learned much from the report that was new to him. He echoed the questions raised by previous speakers. In addition, he said that he

(Mr. Bessonov)

would have liked to have seen the actual wording of the various articles of the Constitution quoted in the report. He understood that the Constitution had been revised in 1978, and the Committee would be in a better position to ascertain whether the provisions of the Convention were properly reflected in it if the full text was available. Likewise, it would be useful to see the wording of the various laws cited in the foot-notes, especially where they placed limitations on the exercise of certain rights. He was sure that Zaire had the necessary laws to implement most of the provisions of the Convention, but there seemed to be some omissions with respect to article 5: he wished to know in particular what legal guarantees existed for the implementation of the rights mentioned in subparagraphs (c), (d)(ii), (e)(i), (e)(ii), and (e)(iv) of that article. It was important that the Committee should assist States in identifying any gaps in their Constitutions with respect to such rights, so that they could be filled when the opportunity arose.

46. There were obviously great differences in the standards of living and of economic and social development in the various parts of the country. That was the kind of situation that could possibly lead to manifestations of discrimination. He drew particular attention to the need, under article 2, paragraph 2, of the Convention, to take special measures to ensure the adequate development of the least-favoured ethnic groups and least-developed regions of the country. He hoped that special attention would be given to any legislative, administrative or other measures taken in that regard when the Government of Zaire submitted its third periodic report. Such measures were of the utmost importance in any developing country.

47. Mr. TĒNĒKIDĒS said that he had been moved to hear the representative of Zaire recount the painful progress of Zaire from dependence to independence. The Zairian people had been victims of racial discrimination in the past and it was understandable that they should now be preaching against it. He was particularly gratified to note the penal sanctions imposed for acts of racial discrimination, the penalties being even more severe if the offender was a person vested with public authority who had committed the offence while exercising his or her functions. That showed that Zaire was endeavouring to combat the omnipotence of the State.

48. He welcomed the Zairian policy with respect to the granting of asylum to refugees, but was a little concerned to know whether there was any provision for the stay of an expulsion order pending an investigation to ensure that the refugee would run no danger through being sent back to his or her own country of origin. Great stress had been laid on that matter by the European Commission of Human Rights. He noted that the Zairian Constitution proclaimed the country's accession to the Universal Declaration of Human Rights; he was interested to know whether that meant that the provisions of the Declaration had the force of law in Zaire.

49. Generally speaking, the report was very satisfactory and enlightening.

50. Mr. ORDÓÑEZ joined Mr. Bessonov in hoping that the texts of the various laws in question would be provided in the third periodic report.

(Mr. Ordóñez)

51. There appeared to be a slight contradiction with regard to the nationality laws. According to the third paragraph on page 15 of the report there was provision for a Zairian to acquire foreign nationality and yet, according to foot-note 57 on that page, dual nationality was forbidden.

52. Although the report was not exhaustive, it was extremely well prepared and he congratulated the Government of Zaire on complying so rapidly with the revised general guidelines adopted by the Committee at its twenty-first session.

The meeting rose at 6 p.m.