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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1174th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eighth to twelfth periodic reports of Mauritius (CERD/C/280/Add.2 and HRI/CORE/1/Add.60) (continued)

1. At the invitation of the Chairman, the delegation of Mauritius took places at the Committee table.

2. Mr. SEETULSINGH (Mauritius) said that a substantial amount of additional information annexed to the periodic report had not been circulated to Committee members owing to constraints within the secretariat. In future all such information would be incorporated into the body of the report. Replying to questions and comments by Committee members, he said that the provisions of the Constitution concerning fundamental rights were based principally on the European Convention on Human Rights. The Constitution of Mauritius had been bequeathed by an Order-in-Council of the British Government at the time of independence in 1968. In so far as it had worked satisfactorily, it had not been deemed necessary to replace or amend it except when Mauritius had become a Republic in 1992 and the President had replaced the Governor-General.

3. With regard to the composition of the National Assembly, referred to in paragraph 6 of the report, of the 62 elected members there were 3 from each of the 20 constituencies in the island of Mauritius and 2 from the island of Rodrigues. The remaining eight members were appointed under a constitutional provision by an independent Electoral Supervisory Commission from among persons who had stood as candidates and, although they had lost, still had a significant following in terms of the number of votes cast, which explained the term "best loser". They were selected, as the first criterion, on the basis of the community to which they belonged. In reply to a comment by a member of the Committee, he would agree that persons of the Islamic faith did not constitute a race, but in Mauritius, Muslims, who constituted about 15 per cent of the population, had come to be considered a community as a result of their own insistence, after independence, on fair representation in the National Assembly and on the best loser system. Explaining that system further, he said that, after the elections, the Electoral Supervisory Commission ascertained community representation among the elected members and then selected four members from under-represented communities. The remaining "best losers" were selected along party lines to ensure fair party representation. The electoral system, including the provision for eight selected best losers, had been worked out by representatives from the United Kingdom, had satisfied all parties and communities at the time, had ensured a smooth transition to independence and had on the whole worked satisfactorily. Community data for that purpose were based on the 1972 census because later census forms no longer contained any question on community affiliation, in line with the new government policy of "one people, one nation". In more recent censuses, such as that of 1990, respondents were given the option of stating to which religion they belonged, and many had done so. In fact, the large religious families more or less tallied with the "community" breakdown into Hindu, Muslim, Sino-Mauritian and "general population", the latter term referring to people of French, African and mixed

descent and possibly devised as a designation of all Christians, of whatever origin or race. It was meant to avoid creating divisions within society and seemed to be generally accepted.

4. Most Hindu or Muslim Mauritians had come from the Indian sub-continent as indentured labourers for the sugar-cane plantations after the abolition of slavery in the colonies. Because neither Pakistan nor Bangladesh had existed at the time, Hindus and Muslims alike were regarded as being "of Indian origin", and it was somewhat by accident that they had come to be regarded as different communities.

5. Within the context of its policy of unity in diversity, Mauritius encouraged various forms of cultural diversity. In addition to the cultural centres referred to in paragraph 89 of the report, there was also an active British Council and Alliance française. Tolerance and respect for other cultures were hallmarks of Mauritian society. The Government had extended substantial support, including subsidies, to the propagation of various cultures and religions. About 65 per cent of the population was of Indian origin - 50 per cent of them Hindu and 15 per cent Muslim - and some 30 per cent of European, mixed and African descent, while the remainder were mainly of Chinese origin.

6. The Convention did not have force of law in Mauritius, but was of a persuasive character in view of the emphasis placed by the courts on the importance of respecting international obligations. To date, the Convention had not been invoked in any judgement, but reference was frequently made to the International Covenant on Civil and Political Rights and to decisions of the European Court of Human Rights.

7. He agreed that people might be afraid to report cases of racial discrimination, but he did not believe that to be the case in Mauritius, where apparently there had simply been no victims of racial discrimination. A private company was free to recruit the candidate of its choosing to a vacant post. It might happen that such a company - and he cited in that connection French ownership of 16 out of the 17 sugar factories in Mauritius and of much of the land - gave preference in recruitment to a member of one community rather than another, but proof of discrimination would be needed, and no such claims had ever been made. That being said, he referred the Committee to the proposed establishment of a watchdog body, the Equal Opportunities Commission. In the public sector, a similar role was performed by the independent Public Service Commission, any discriminatory decision of which could be reviewed by the Supreme Court.

8. The Public Gathering Act 1991, although it did not refer specifically to the prosecution of organizations, did provide for the prosecution of individuals promoting racial hatred. Since an organization was a body of individuals, that body would also be liable to prosecution. Consideration could perhaps be given, however, to amending the law to introduce an offence relating specifically to organizations. There was no ban on the establishment of organizations representing the interests of one community. There was, for instance, a political party called "Hezbollah", which had been set up to protect Muslim interests but it had not been involved in stirring up racial

hatred or attacking the interests of other communities. The large national parties sought to ensure that their membership covered all communities.

9. On the subject of personal law and the comments of the Human Rights Committee, to which members had referred, he pointed out that the relevant chapter of the Constitution had been annexed to the periodic report, but had unfortunately not been circulated to members. The point was that section 16, subsection 4 of the Constitution did allow for the application of personal laws, i.e. with respect to adoption, marriage, divorce, burial, devolution of property, death and other similar matters. No personal laws had as yet been introduced in Mauritius, although there had been a move by some Muslims to introduce Islamic personal law. Permissible though that was under the Constitution, consideration would need to be given to certain aspects that might conflict with equal rights. Under Mauritian law, all citizens, including Hindus were now required to undergo the formality of a civil marriage so as to give marriage legal force and protect spouses. "Natural" children of previous religious marriages had the same succession rights as "legitimate" children. Civil law continued to follow the French Civil Code, while the law of criminal procedure, a large part of civil procedure and Mauritian law of evidence, administrative law and constitutional law were all based on British law. Extensive personal law reforms in France in the 1960s, particularly concerning women's rights, had been introduced into Mauritius in 1981. The outcome was a complex mixed system of British and French law, on which had been grafted a whole system of specifically Mauritian law built up from precedents, judicial decisions and reporting from the Supreme Court.

10. Regarding the publication of the book entitled The Rape of Sita, on which the Human Rights Committee had taken a strict stand in the name of freedom of publication, he explained how the title had caused offence to those who worshipped Sita, a Hindu goddess, and how they had protested to the Prime Minister. The book had not been unofficially banned as ridiculing a holy name. The book itself, which indeed made a positive contribution to understanding about relations between men and women, was not discriminatory in itself but was thought to constitute a potential incitement to discontent and violence. Again, out of respect for the beliefs of other communities, the Government had prohibited the import of Salman Rushdie's The Satanic Verses.

11. In reply to a question about freedom of movement, he assured the Committee that there were no restrictions, save in regard to private property or security areas in ports or airports for example.

12. Members had asked about the use of minority languages in schools. Under the Education Act, the official language of teaching was English, although French was also used. Creole and Bhojpuri were not used, even in primary schools, because the Government considered that children should learn English and French as quickly as possible in order to improve their later employment prospects. Creole and Bhojpuri were not banned in schools, and a teacher might use them occasionally, for instance to explain a difficult concept.

13. A knowledge of English or French was essential for access to university. Primary and secondary education were free, and there were plans to introduce free pre-primary education. Religious schools were allowed to reserve 50 per cent of their places for pupils of the religious group

concerned. A number of places in State schools were reserved for pupils studying oriental languages. State schools were free, but fee-paying schools also existed.

14. The Constitution stated that the language used in the National Assembly should be English, because all laws were now passed in English, but most educated persons were competent in both English and French. A defendant appearing before a court was provided with an interpreter if he or she did not understand the language of the court: that had been the case, for instance, in prosecutions of alleged drug couriers from India who spoke neither English nor French.

15. No language was specified for the electoral process. As in some other countries, election candidates were allotted a symbol so that even illiterate voters could identify them on the ballot paper.

16. Most newspapers were in English or French, but items in Creole were published occasionally: that sometimes caused problems because there was no standard form of the written language. Radio and television programmes were broadcast mainly in English and French, with daily public information programmes on agriculture, health and hygiene in Bhojpuri and Creole. Several new radio and television stations were planned. Radio and television stations were run by a corporation which had been set up by the State but was completely independent, and anyone with a serious complaint could take it before the courts.

17. At present, the Ombudsman did not deal directly with cases of racial discrimination, but concentrated on alleged maladministration in the public service.

18. Mr. AHMADU said that, even if the Government did not wish to distinguish between the various ethnic groups in future censuses, it might define broader groups such as "Mauritians of Indian origin" or "Mauritians of African origin".

19. Mr. SHAHI noted that the information provided referred to various communities, but not to the indigenous population. Who and how many were the indigenous inhabitants of Mauritius?

20. If there was no system of personal law for communities such as Hindus or Muslims, were wills made in accordance with systems of personal law invalid? He would also like to know whether children of a marriage contracted according to personal law were considered natural or legitimate.

21. He noted that the additional written information provided by the Mauritian delegation distinguished between "Islam", "Mohammedan", "Muslim" and "other Muslim" communities. What was the difference between them?

22. Mr. ABOUL-NASR noted that the representative of Mauritius had stated that large areas of land, and in particular the large plantations, were owned by descendants of the French colonists. Did that mean that land ownership tended to be concentrated in the hands of one ethnic group, thus perpetuating the social structure of the pre-independence period? He asked about the

percentage of non-Europeans who owned property, especially large areas such as plantations, and how ownership patterns had changed in the recent past. If there was a tendency for landowners to employ people from their own community, as the representative had stated, the situation would be likely to perpetuate itself.

23. Mr. GARVALOV (Country Rapporteur) thanked the Mauritian delegation for its report and for its straightforward and honest replies to the Committee's questions. He hoped that some of the issues raised would be discussed more fully in the next report. He had been particularly encouraged to hear that the Government might consider amending its legislation to improve its implementation of article 4 of the Convention, particularly subparagraph (b) dealing with the prohibition of racist organizations.

24. Mr. SEETULSINGH (Mauritius) said that the Government had decided to conduct censuses of the population without breaking the data down to indicate ethnic groups. However, the percentages of the total population represented by the various groups were likely to remain constant for some time, so some conclusions about them could still be drawn.

25. In reply to Mr. Shahi's question, he said that Mauritius had no indigenous population. The first visitors to the island had been Arab and Portuguese sailors, and it had then been colonized by the Dutch.

26. Matters of family law such as marriage, divorce and inheritance were governed by the Civil Code (based on the French Civil Code). In particular, the law on inheritance followed the French pattern whereby a person could not completely disinherit his or her children. In the past, there had been cases of people marrying in a religious ceremony and having children, and then marrying someone else in a civil ceremony: in that case, the children of the first marriage were considered natural children and only those from the second marriage were legitimate. The law had now been changed to make a civil marriage ceremony compulsory.

27. The terms "Mohammedan", "Muslim", and "Islam" should probably all be taken to mean "Muslim".

28. The owners of the large plantations were generally descendants of French sea captains and other colonists who had been granted the land by France. The current owners had, of course, been Mauritian citizens for generations and their property rights were guaranteed by law. In general, the plantations were prosperous and well managed and there seemed to be no public resentment about their ownership.

29. The CHAIRMAN said that the adaptability and ethnic harmony of Mauritian society was indeed a model for other countries to follow. The Committee had thus concluded the first part of its consideration of the eighth, ninth, tenth, eleventh and twelfth periodic reports of Mauritius.

30. The Mauritian delegation withdrew.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Bosnia and Herzegovina

31. At the invitation of the Chairman, the delegation of Bosnia and Herzegovina took places at the Committee table.

32. Mr. van BOVEN said that the Committee was in a unique position to assist Bosnia and Herzegovina and would gladly help in any way the delegation might suggest. On the basis of the discussion earlier in the session, he had drawn up a preliminary paper suggesting points to be included in the Committee's decision on Bosnia and Herzegovina. The discussion had focused on the report of the Special Rapporteur of the Commission on Human Rights, the statement made by the President of the Security Council on 8 August 1996 and the worrying trend in Bosnia and Herzegovina towards increased ethnic division. The Committee had noted that some parties to the Dayton Peace Accords were ignoring their international obligations under Chapter VII of the Charter of the United Nations and the Accords themselves by not arresting and transferring people who had been indicted by the International Criminal Tribunal for the Former Yugoslavia. The Committee had noted the divided opinions on the expediency of holding elections as the situation stood.

33. Mr. ABOUL-NASR said that the Dayton Accords were a compromise and, as such, far from perfect, particularly when looked at from the point of view of the Convention. The Committee would be interested to hear how it could best help find solutions to the problems facing Bosnia and Herzegovina.

34. Mr. BIJEDIC (Bosnia and Herzegovina) said that there was much confusion on the ground in Bosnia and Herzegovina, compounded by efforts to appease the party responsible for the horrors that had taken place there. The Dayton Accords were a compromise that had brought a fragile peace to Bosnia at the same time as preserving the Serb entity that had emerged from aggression and genocide. When pointing the finger of blame for the aggression, the Dayton Accords were selective. They singled out only two or three people, overlooking others such as Mr. Krajisnic, the President of the so-called Assembly of the Serb Republic. Perhaps it was time for a new Dayton agreement.

35. The Committee had every justification for its concern over the expediency of elections. There was no freedom of movement, refugees could not return home and there was no freedom of the press. The Dayton Accords stated that persons should vote in their place of origin. That was not what would happen. People were going to be forced to vote where they where. The Croats and Serbs would force people to vote in the occupied territories of Bosnia and Herzegovina - Herzeg Bosna and the Serb Republik - which would grossly distort representation on communal councils. The aggressors would become deputies and the whole process of the peaceful and democratic integration of Bosnia and Herzegovina would be wrecked. It did not appear likely that there would be any stability in Bosnia and Herzegovina, and a new war was not out of the question.

36. The Committee was also right to be concerned at the situation regarding the International Criminal Tribunal for the Former Yugoslavia. All sides had committed atrocities during the war. However, there was a difference both in the scale of and reasons for the atrocities by Bosniaks. They had been on the verge of being wiped out by Serbs who had not only been better equipped, but had also had the support of the so-called Yugoslav army. In 1993, the Croats had entered Bosnia and Herzegovina, which was thus under attack from two sides. Bosniaks who had been found guilty of atrocities had been duly handed over to the Tribunal.

37. It was unfortunate that the Special Rapporteur of the Commission on Human Rights had not started her work where her predecessor had stopped.

38. It was unacceptable that some European countries appeared to be continuing to appease elements, namely the Serbs, that they had been appeasing for four years. At least three countries in Europe were ready to forgive the aggressors, and one country clearly sided with the second aggressor.

39. The CHAIRMAN asked how the provisions of the Convention could best help improve the situation in Bosnia and Herzegovina.

40. Mr. BIJEDIC (Bosnia and Herzegovina) said that anything the Committee could do would be welcomed by the Government of Bosnia and Herzegovina. The Government had three strategic policy aims. The first was to solicit the support of all Committees, Governments and so forth for the peaceful and democratic reintegration of the State of Bosnia and Herzegovina along the lines of the Dayton Accords. The second was to solicit support for the rehabilitation and reconstruction of the country's economy, the employment of refugees and displaced persons and the creation of a sound basis for development. The third was the establishment or improvement of State and social institutions.

41. Mr. GARVALOV said that the three policy aims should be included in the paper that Mr. van Boven had agreed to draft. The Committee had, during its discussion on Bosnia and Herzegovina, been concerned that, in addition to being a compromise, the Dayton Accords looked likely to partition the State along ethnic lines, which was the opposite of what was advocated in the Convention. It was the Committee's duty to support the existence of an independent State and it would do all it could to help solve the problems in Bosnia and Herzegovina.

42. Mr. WOLFRUM wondered what alternative there might be to the elections as envisaged and whether, if they were manipulated, conflict would in any event ensue. Were the elections as planned not simply a consolidation of ethnic cleansing?

43. The reconstruction of Bosnia and Herzegovina as envisaged by the Dayton Accords was clearly a complicated task, and he wondered what plans there were for implementing that part of the Accords, whether any steps had already been taken or whether plans would not be made until after the elections.

44. Mr. YUTZIS said that, having studied the Dayton Accords, it had come as no surprise to hear that a new war could not be ruled out. The Accords would not solve the underlying conflict in the region.

45. Regarding the three strategic policy aims referred to, the Committee should be able to play a part in the strengthening of institutions and, more particularly, of the social fabric essential to those institutions. Some additional information might shed more light on the specific role which the Committee could play in helping to solve the underlying problems in the region, bearing in mind its expertise in inter-ethnic conflict.

46. Mr. de GOUTTES expressed full support for the proposals made by Mr. van Boven, particularly concerning the strengthening of cooperation with the International Criminal Tribunal for the Former Yugoslavia.

47. With regard to the various institutions provided for in the Dayton Accords, he asked what progress had been made with the establishment of a Human Rights Chamber, whether it was operating and, if so, whether it had handed down any decisions.

48. What was the role of the Ombudsman for Bosnia and Herzegovina and what results had she obtained so far? What cooperation was there between her and the Bosnian authorities, and between the Bosnian authorities and the Special Rapporteur of the Commission on Human Rights?

49. The Dayton Accords had also made provision for a body to deal with the question of the ownership of property which had been expropriated and of reparations and he asked whether that body was now operating.

50. Mr. SHAHI said that the grim analysis of the situation in Bosnia and Herzegovina was a matter of deep concern to the Committee and he endorsed the views of other members and the desire of the Committee to be helpful, particularly in respect of implementing article 4 of the Convention and strengthening Bosnia's institutions in any other way.

51. The most important question was how to maintain and strengthen the fragile peace. In that connection, the Committee should give some thought to the need for a successor force to IFOR after its withdrawal at the end of 1996. Unless peace was maintained it would be impossible for the Committee to help in any way to strengthen institutions in Bosnia and Herzegovina.

52. Mr. RECHETOV said that, in trying to establish its role in the process established in the Dayton Accords, the Committee had to recognize the Accords as being the only solution available and should refrain from undermining them.

53. The International Criminal Tribunal for the Former Yugoslavia concentrated on war crimes and genocide but did not appear to focus on ethnic cleansing. The Committee should therefore encourage the Tribunal to continue its work and punish all those responsible for war crimes. In that connection he drew attention to his draft decision, which was intended to supplement the proposals by Mr. van Boven.

54. Mr. BIJEDIC (Bosnia and Herzegovina) said that the Dayton Accords represented a step forward and although it remained a compromise, it was all that could be achieved.

55. Welcoming the positive comments and support of the Committee, he emphasized the need for active support for all three strategic aims to which he had referred, as they were all interrelated. The Committee's role lay in strengthening the institutions in order to promote reconciliation and democratization and to bring to justice those who had been indicted.

56. The questions raised by Mr. de Gouttes could not be answered because the mission had received no information about the activities of the Human Rights Chamber or the Ombudsman. However, his Government was ready to cooperate with all foreign representatives in Bosnia and Herzegovina, whatever their field of activity. The Special Rapporteur of the Commission on Human Rights was doing her best but lacked the resources to do more than maintain calm and equilibrium.

57. As Mr. Shahi had stated, peace had to be preserved regardless of the compromise represented by the Dayton Accords and of the resistance of separatist forces and of those who were growing rich from the spoils of war. The Government was committed to democracy and peace and would insist on some kind of military presence after IFOR.

58. The CHAIRMAN thanked the representative of Bosnia and Herzegovina for his contribution to the Committee's discussions, and expressed the hope that there would be further useful contacts between his Government and the Committee.

59. The delegation of Bosnia and Herzegovina withdrew.

The former Yugoslav Republic of Macedonia

60. At the invitation of the Chairman, Mr. Belcev (The former Yugoslav Republic of Macedonia) took a place at the Committee table.

61. The CHAIRMAN said that, having been informed about some of the ethnic tensions in Macedonia and the apprehensions concerning them, the Committee had considered it preferable to open a dialogue with a representative of that country at its current session rather than to wait for its initial report.

62. Mr. BELCEV (The former Yugoslav Republic of Macedonia) said that Macedonia was one of the independent States which had emerged after the dissolution of the former Yugoslavia, having gained independence in a peaceful way as the only successor to the former Federation. It had established the legal framework and the institutions necessary for the functioning of society and the strengthening of human rights standards and mechanisms.

63. Its Parliament consisted of 120 members, some 20 of which represented ethnic Albanians. There were three political parties, with the governing party accounting for almost two thirds of the seats in Parliament.

64. The country's legal framework to a great extent conformed to international human rights standards and in some ways went beyond them. The

national minority groups had been accorded a special position under the Constitution, thus providing a sound basis for the further promotion and protection of minority rights.

65. The High Commissioner for Human Rights had maintained his office in the country for the purposes of continued cooperation and dialogue with the Government.

66. Despite current political tensions, education was not threatened. Citizens had equal access to education which was provided in the mother tongue of the minorities up to baccalaureate level. In addition, a special quota system operated in both universities to promote the entry of minority students.

67. As the mission had received very short notice of the meeting, it had not had time to prepare more information or to receive instructions or data from the capital.

68. The competent authorities were preparing the initial report under article 9 and hoped to submit it on time.

69. The CHAIRMAN thanked the representative of Macedonia for addressing the Committee and said he looked forward to receiving his country's initial report and to considering it in March 1997.

The meeting rose at 1 p.m.