

535th meeting

Friday, 7 August 1981,
at 3.20 p.m.

Chairman: Mr. BAHNEV

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

Fifth periodic report of Cuba (CERD/C/75/Add.2) (concluded)

1. Mr. HEREDIA (Cuba), replying to questions from Mr. Dechezelles, said that the types of offences which could be prosecuted by private individuals were described in article 379, paragraphs 1 and 2, of the Criminal Code.
2. Replying to questions from Mr. Partsch, in particular regarding the automatic invocation of rights guaranteed under the Convention, he drew attention to the words "apart from" (CERD/C/75/Add.2, p. 15), which meant that, in addition to the legislation mentioned in the report, the rights guaranteed under the Convention could be invoked automatically by victims of racial discrimination.
3. With regard to the free choice of employment, he drew attention to article 44 of the Constitution, which indicated that workers could choose the employment of their preference. Since Cuba had no unemployment, the right thus guaranteed did not apply to a hypothetical situation but could be exercised in reality. As to the question concerning trade unions, he drew attention to the fact that, before the Revolution, workers and employers had been divided, whereas they were not united in defending the interests of workers, as evidenced by the Constitution and the activities of the Cuban Workers' Organization (Central de Trabajadores de Cuba). Moreover, the provisions of article 53 of the Constitution were formulated in broad terms, thereby ensuring workers extensive freedom of association, demonstration and the like.
4. Replying to the question concerning elections, he explained that Cuba was a broad democracy in which any member of the community could propose a candidate for election. Elected officials could be removed if they failed to fulfil the provisions of article 56 of the Constitution which governed their duties, for example to uphold the interests of the community and to report on their activities, and which guaranteed electors the permanent right to remove them. Referring to the question concerning the education of disabled children, he explained that, like

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(Mr. Heredia, Cuba)

education in general, the education and rehabilitation of disabled children was free of charge in Cuba. Cuba also had a National Committee for Disabled Persons, which was organizing activities in connection with the International Year of Disabled Persons and which dealt with that aspect of life in general. In connection with the campaign against illiteracy, which had been carried on in Cuba since 1961 with the aid of such agencies as UNESCO, he drew attention to the fact that adult illiteracy currently existed only among those people who were physiologically unable to learn. Also as a result of such efforts, it would soon be possible to ensure that all adults had completed the sixth grade and could read and write.

5. With regard to the question concerning Cuba's international and national fulfilment of its obligations under the Convention, he reiterated that the initial part of the fifth periodic report should be considered together with previous reports, because the Government was in fact trying to provide exhaustive information on Cuban legislation for the benefit of the Committee. However, racial discrimination did not exist in Cuba and it was therefore difficult to devise measures to deal with a non-existent problem. Accordingly, the fifth periodic report described the current effort to supplement existing measures.

6. Replying to questions from Mr. Tenekides, he explained that Cuba's solidarity with national liberation movements, although misrepresented by its enemies, was directed towards helping such movements to combat colonialism and neo-colonialism, sometimes even after they had come to power.

7. Replying to questions from Mr. Inglés, he explained that the penalties provided under articles 239 and 240 of the Criminal Code applied to individuals, not to associations. With regard to accomplices in crimes of apartheid or racial discrimination, he pointed out that the provisions of article 18, paragraph 4, of the Criminal Code were sufficiently broad to ensure the strict application of the law in connection with violators and to close any loop-holes that might enable such people to avoid punishment.

Mr. Heredia (Cuba) withdrew.

Sixth periodic report of India (CERD/C/66/Add.33)

At the invitation of the Chairman, Mr. Nevrekar (India) and Ms. Malik (India) took places at the Committee table.

8. Mr. NEVREKAR (India), introducing his country's sixth periodic report (CERD/C/66/Add.33), briefly reviewed India's pioneering role in combating racism and racial discrimination and pointed out that, for example, as far back as 1946 India had imposed comprehensive sanctions against South Africa. The Constitution of India prohibited all forms of discrimination and guaranteed equality of opportunity, equality of treatment before the law and equal protection under the law.

9. The report before the Committee was devoted mainly to providing additional information on various points raised during the discussion of India's previous report. However, the Government of India did not recognize the right of the Committee to discuss issues relating to the Minorities Commission and, accordingly, such information had been provided, in keeping with India's consistent co-operation with the Committee, as a matter of courtesy.

10. Mr. VALENCIA RODRIGUEZ said that the information provided in India's sixth periodic report showed that the revision of the Constitution had not affected the implementation of the provisions of the Convention in India. For example, under articles 14, 32 and 226 of the Constitution, victims of racial discrimination were still guaranteed speedy remedies and compensation. He also expressed satisfaction at the measures taken to develop cultural ties with several African countries.

11. One of the Indian Government's main concerns related to the Scheduled Castes and Scheduled Tribes and, in that connection, he welcomed the attention the Government was devoting to the most critical aspects of their life as well as its efforts to preserve their traditional customs, while preventing their further impoverishment.

12. There did not seem to be any conflict between the Indian Constitution and the exercise of the freedoms set forth in the Universal Declaration of Human Rights, according to the Government's interpretation of article 29, paragraph 2, of the Declaration which permitted certain limitations. Such an interpretation could help other States which still had difficulty reconciling the Universal Declaration with their own constitutions.

(Mr. Valencia Rodriguez)

13. With regard to the implementation of articles 4 (a) and 7 of the Convention, he expressed satisfaction with the provisions of article 19, paragraph 2, of the Indian Constitution and sections 153 (a) and 153 (b) of the Penal Code. The efforts to implement article 7 were especially noteworthy, not only because of the financial and human resources involved, but also because of the vastness of the territory and the large number of people to which they applied. Accordingly, he expressed the hope that information would continue to be provided on the implementation of article 7.

14. While not entirely agreeing with the criteria on which India had based its decision not to make a declaration under article 14 of the Convention, he considered that it was the sovereign privilege of States parties to make such a decision. Moreover, he took note of the fact that India already had adequate national machinery to ensure that there was no racial discrimination and respected its opinion that the making of a declaration under article 14, paragraph 1, would encourage motivated complaints.

15. Mr. PARTSCH drew attention to the difficulties created by the granting of jurisdiction to the Supreme Court to review the constitutionality of the laws of constituent States of the Indian Union, since only the judges of such States could be considered to be sufficiently familiar with the laws of their own States and since complainants might thus be obliged to travel great distances to the seat of the Supreme Court. Accordingly, he requested information about the effects of that procedure and about any experience acquired in that connection.

16. The Government of India had questioned the Committee's competence to ask questions about religious and linguistic minorities, but he pointed out that in some countries religious and linguistic minorities were also ethnic in origin.

17. Referring to the expenses incurred and the financial assistance granted to persons suing as paupers, he asked whether, as laymen, such people fully understood the relevant procedure and whether they were entitled to employ a lawyer and to receive public funds for that purpose as well. In that connection, he again drew attention to the difficulties created by the fact that the Supreme Court had jurisdiction to review the constitutionality of state laws, for example in the event the laws of one state contained discriminatory elements. In such circumstances, the provision of legal aid had a very important role to play in the implementation of the provisions of article 6 of the Convention.

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18. Mr. TENEKIDES commended the report and the results of India's efforts to promote the welfare of all citizens, irrespective of origin.

19. Two points in particular were of importance for the work of the Committee. The first concerned the Minorities Commission. Personally, he could not see why the Committee should not be competent to deal with that matter; admittedly, another body existed in the field, namely the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, but there was no reason why two bodies should not look in parallel at the same issues. The existence of minorities in a country might lead to tensions with the majority population, and that was a problem which did fall within the competence of the Committee. It would be an undesirable precedent for the Committee to set if it abdicated its responsibility for an important element of racial discrimination.

20. The second point concerned the Indian Government's attitude, which he could not accept, to making a declaration under article 14 of the Convention. When that article entered into force, it would add a vital element to the machinery for promoting and protecting human rights. There were two arguments to be considered. The first, reflected in the report, was that the national Constitution and national institutions offered the best protection to citizens and that no external supervisory body was needed. It was worth remembering, however, that the legislation of India contained significant elements of English law, and that a similar issue had arisen in the case of the United Kingdom's ratification, within the Council of Europe, of the European Convention on Human Rights. The United Kingdom Government had ultimately accepted the principle of individual petitions to an external body, without feeling that its jurisdiction or sovereignty suffered thereby.

21. The second argument to be borne in mind was that the Committee, in considering petitions under article 14, would not be required to render a judgement, but simply to make suggestions to individuals and to Governments. Also, article 14, paragraph 7, stressed that the Committee would not consider a petition unless the petitioner had "exhausted all available domestic remedies".

22. Mr. DECHEZELLES said that, as preceding speakers had already noted, the Government of India had demonstrated its eagerness to explain the situation obtaining in the country, even in fields which fell outside the purview of the

(Mr. Dechezelles)

Committee. The quality of the report was exceptionally high, even in its discussion of matters which members of the Committee, with their different cultural backgrounds, might question, such as the collective punishment of the practice of untouchability, which was aimed at alleviating social problems specific to India. The report made clear that in India the external forms of democracy were not considered enough; the exercise of power involved the duty of active generosity and identification with the least advantaged of its citizens. Since the time of Gandhi, India had been showing the world the path of unity, peaceful co-operation and good relations among countries.

23. Mr. TENEKIDES said that he acknowledged that the decision whether or not to make a declaration under article 14 was the absolute prerogative of the Indian Government. However, he questioned that Government's arguments; if they were to be generally followed, that article would be rendered meaningless, and that would be damaging to the efficiency of the bodies concerned.

24. Mr. VALENCIA RODRIGUEZ said that he did not share the view expressed in the report that national machinery was adequate to ensure that no racial discrimination took place.

25. Mr. INGLES said that the definition of those minorities dealt with by the Minorities Commission appeared to be based on differences of language and religion. However, it was not clear whether that classification cut across racial or ethnic groups. As had been pointed out during the Committee's consideration of the fifth periodic report (CERD/C/20/Add.34), there was some question as to whether article 15 of the Indian Constitution complied with the Convention, and in particular its article 4 (a), since in connection with the prohibition of discrimination the Constitution mentioned the concept of discrimination on the grounds of race, but not on the grounds of colour or ethnic origin. States parties to the Convention had a duty to enact national legislation in accordance with the provisions of the Convention; the relevant sections of the Indian Penal Code, however, covered discrimination on the ground of race, but similarly ignored the concepts of "colour" and "ethnic origin". The Code could thus be regarded as satisfying only one of the requirements of article 4 of the Convention. He asked whether, if that assessment was correct, the Government would be prepared to accept an amendment to cover those aspects which were missing.

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(Mr. Inglés)

26. In its initial report (CERD/C/R.3/Add.3/Rev.1 and Add.39) in 1970, the Indian Government had given information concerning the special reservation of seats in Parliament for the Scheduled Castes and Scheduled Tribes, while indicating that that arrangement did not debar such persons from election outside the reserved quotas. The special reservation had been due to lapse in 1970, but had been extended for a further 10 years. Nothing in later reports indicated whether any further extension had been made; if not, he asked whether it was a fair assumption to make that those tribes and castes had been placed on an equal footing with the rest of the population, and no longer required special measures.

27. He drew attention to the amendment to article 19 of the Indian Constitution, described in paragraph 4 of the report. What was the effect of the deletion of sub-clause (f), which removed from among the rights guaranteed by the Constitution the right "to acquire, hold and dispose of property"? What bearing did the deletion have on the application of article 5 of the Convention? It would be interesting to know what ownership of property was allowed a citizen of India, and what implications the deletion of the provision in question had for those already holding property.

28. Mr. DEVETAK observed that the sixth periodic report of India reflected the special social, economic and other conditions which the country was facing in seeking to give effect to the principles and provisions of the Convention. There was much to be learned from India's efforts to develop its vast and diverse territory in harmony and understanding.

29. He welcomed the information provided in the report regarding the excellent results of the special measures adopted in accordance with article 2, paragraph 2, of the Convention, for the protection and development of the so-called Scheduled Castes and Scheduled Tribes. Chapters 4 and 5 of the report of the Commissioner for Scheduled Castes and Scheduled Tribes dealing with economic development, land, agriculture and housing programmes were particularly interesting; it would be useful if the reports of the Commissioner continued to be provided to the Committee as an annex to India's periodic reports. He appreciated the Indian Government's willingness to continue its dialogue with the Committee concerning the various religious and linguistic minorities. He found the information provided regarding the powers of the Minorities Commission and the High Power Panel described in

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(Mr. Devetak)

annex VII of the report to be particularly interesting. He suggested that the Indian Government might provide the report of the High Power Panel to the Committee when submitting its next periodic report.

30. Mr. PARTSCH said that it was his understanding that the Indian Government did not deny the Committee's competence to deal with all minorities but rather only with linguistic and religious minorities. Castes were not mentioned at all in paragraph 14 of the report. The Committee had discussed at previous sessions whether castes came within the scope of article 1 of the Convention, which was broader, in his opinion, than article 4. The Indian representatives had maintained on those occasions that castes were social groups, while experts from countries that were neighbours of India had taken a different view.

31. The CHAIRMAN said that his interpretation of the Convention was closer to Mr. Partsch's. The Convention did not deal with minority rights as such but rather with a much broader spectrum of groups.

32. Article 1, paragraph 4, and article 2, paragraph 2, referred to the exceptional, additional measures which must be taken when circumstances so warranted. The Government of India maintained castes were social groups yet it had always provided the Committee with information on the Scheduled Castes and Scheduled Tribes.

33. With regard to linguistic and religious minorities, he considered that it was difficult to find examples of purely linguistic minorities which did not have an ethnic basis. If one could be found, however, it would be outside the scope of the Convention. The same applied to religious minorities.

34. Mr. NEVREKAR (India) expressed gratitude for the words of high praise which some members had had for his Government's report. He assured the Committee that his Government attached great importance to their views. The questions raised called for detailed study and his Government would endeavour to provide comprehensive replies in its next periodic report.

35. Referring to comments concerning the Minorities Commission, he stated that the powers of the Commission were not defined in the Constitution but rather in the resolution of 12 January 1978, which provided that the Commission should safeguard the interests of minorities whether based on religion or language. Its primary function was to evaluate the working of the various constitutional and legislative

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(Mr. Nevrekar, India)

safeguards for the protection of minorities. The expression "racial discrimination" as defined in article 1, paragraph 1, of the Convention meant any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin. Accordingly, the functions of the Minorities Commission did not fall within the scope of the Convention but were merely of an internal nature intended to ensure that the provisions of the Indian Constitution were fully implemented.

36. Ms. MALIK (India), referring to comments regarding the role of the Supreme Court in reviewing the validity of laws enacted by state governments, said that the Supreme Court of India comprised judges from the various constituent states of the Union. The judges were eminent jurists and were, of course, familiar with the laws of their respective states. Thus, if any question arose regarding a law of a given state, the judge from that state would most certainly be called to the bench for the case.

37. With regard to comments concerning legal expenses, she indicated that a petitioner or plaintiff in a legal suit could be declared a pauper and thereby obtain legal aid. The Legal Aid Society in India had done a great deal of work in that field. Moreover, in cases of genuine need, it was always possible to receive sympathetic consideration from some charitable organization or individual lawyer who provided free legal advice because of an interest in the constitutional issues involved or in the lot of the weaker sectors of society.

38. Mr. Inglés had expressed the opinion that section 153 of the Indian Penal Code was not sufficiently broad to cover distinctions on the basis of colour, as referred to in article 4 of the Convention. However, that section of the Penal Code also contained the expression "or any other ground whatsoever", which was all-inclusive. In practical terms, colour was not a cause of disharmony in India.

39. The CHAIRMAN observed that the next periodic report of India was due in January 1982. If preparations for that report had not yet begun, the submission might be delayed. He expressed the hope that that would not be the case and urged all States parties to strive to submit their reports on time and to follow the revised guidelines for the preparation of reports.

The meeting rose at 5.20 p.m.

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