

578th meeting

Wednesday, 4 August 1982,
at 10.40 a.m.

Chairman: Mr. INGLES

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

Seventh periodic report of the Philippines (CERD/C/91/Add.7 and Add.12) (concluded)

At the invitation of the Chairman, Mr. Moreno-Salcedo, Permanent
Representative of the Philippines, joined Mr. Arcilla at the Committee table.

1. Mr. APIOU said that the statement in part I, section B of the report that "the provisions of the Convention shall be implemented by way of internal laws or administrative regulations only in those instances where existing constitutional or penal safeguards become inadequate or non-existent" was not in keeping with the provisions of article 4 of the Convention, which required States parties to take preventive steps to eliminate racial discrimination. The mere fact that racial discrimination did not exist in the Philippines, as the Government claimed, did not mean that there was no need to enact legislation to prevent its occurrence in the future. It would be advisable, therefore, for the Philippines Government to reconsider its position in that respect.

2. Mr. DECHEZELLES inquired whether Presidential Decree No. 1350-A, mentioned in part I, section B, had remained in force after the lifting of martial law in January 1981. He was asking that question in view of the statement in the commentary on article 4 of the Convention that "there is no need to declare as punishable any act, practice, organization or institutions which have as their basis racial discrimination, if they do not exist". The report, in fact, contained a number of apparent contradictions. Although it was the stated position of the Philippine Government that racial discrimination, as defined by the Convention, did not institutionally or effectively exist in the Philippines, the comments on article 2, paragraph 1 of the Convention in part II of the report mentioned cases brought before the Offices of the Sandiganbayan and the Tanodbayan, together with instances where racial discrimination-like practices or manifestations of racial discrimination might have occurred. A subsequent reference to "other means of eliminating barriers between races" might give the impression that barriers between races did, in fact, exist.

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3. Mr. PARTSCH drew attention to the statement in paragraph 1 (f) of part III of the report that "the autonomous regions were entitled to a yearly amount of at least 1/13th of 1 per cent of the total national internal revenue collections" and said that amount seemed hardly adequate. It would be of interest to the Committee to learn whether any plans had been made to hold general elections since the lifting of martial law and whether the Philippine Government intended to ratify the International Covenant on Civil and Political Rights, which was closely connected to the Convention. During the consideration of the sixth periodic report of the Philippines, the representative of that country had promised to provide information on cases which had been brought to the attention of the office of the Ombudsman. The seventh periodic report, however, did not contain that information.
4. Mr. ARAMBURU asked whether the issuing of Presidential Decree No. 93, mentioned in the comments on article 2, paragraph 1, of the Convention, meant that the trading rights of Muslim traders were limited in any way because they belonged to a minority group.
5. Mr. DEVETAK, referring to section B of part I of the report, requested further information on the internal laws or administrative regulations which had been enacted to implement the provisions of the Convention where existing constitutional or penal safeguards had been inadequate or non-existent. With regard to the information on the demographic composition of the Philippines in section C, he asked what the legal definition of a linguistic or ethnic group was and how a cultural minority and a linguistic minority were differentiated. Further details on the composition and effectiveness of the Commission on National Integration and the operation of the Presidential Assistance on National Minorities, which were mentioned in paragraph 5 (a) of part II of the report would also be useful, as would information on concrete results produced by the various Presidential Decrees, with particular reference to the development of the linguistic and cultural identity of various ethnic groups. The offer of the Philippine Government to serve as host for the Second World Conference to Combat Racism and Racial Discrimination was gratifying.

6. Mr. BAHNEV said that the report showed that the situation in the Philippines was very complex and that the Government was taking satisfactory measures in various fields to implement the provisions of the Convention. He was looking forward to receiving new information in the next periodic report on the effects of those measures on the integration of cultural and other minorities into Philippine society. He was particularly gratified by the measures taken to implement article 3 of the Convention. Referring to the comments on article 4, he inquired about the use of the word "overtly" in the last line of paragraph 3; the passage, as it stood might imply that the ideologies in question existed covertly in the Philippines.

7. Mr. MORENO-SALCEDO (Philippines), responding to a question as to why, if racial discrimination did not exist in the Philippines, Presidential Decree No. 1350-A had been enacted, said that, as explained in the report, the purpose of the Decree had been to strengthen existing safeguards and to make explicit to the public that racial discrimination was a crime in the Philippines, to close any loophole that might exist and prevent infringements of the Convention, and to punish any instance of racial discrimination. There was therefore no contradiction between the provisions of the Decree and the statement that there was no racial discrimination in the Philippines.

8. In reply to a question concerning the applicability of that Decree after the lifting of martial law, he explained that the decree suspending martial law stipulated that all existing laws and decrees would continue to be in force unless provision was made to the contrary. Moreover, the transitional provisions contained in article 17, section 3 (2), of his country's Constitution provided that all decrees enacted under the incumbent President would continue to be valid unless revoked by subsequent decision of the same president or by the National Assembly.

9. With regard to the autonomous regions, of which there were three, he explained that Metropolitan Manila was autonomous in the sense that it could pass certain resolutions applicable to it. Regions IX and XII included provinces where Muslim Filipinos lived. On the matter of elections, he pointed out that elections for regional legislative bodies had been held approximately one month earlier, presidential and provincial elections had been held approximately two years earlier, village-level legislative elections had been held in recent weeks and elections for the national legislature were planned for 1984.

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10. With regard to ratification by the Philippines of the International Covenant on Civil and Political Rights, he said that the legislature had resumed work after the lifting of martial law and could take up the question of ratifying the Covenant at any time. However, the current legislature might well pass that matter on to the legislature to be elected in 1984. It was true that it was the President who actually ratified international conventions, on the advice and with the consent of the legislature.

11. On the subject of the functions of an ombudsman, he pointed out that two institutions, the Sandiganbayan and Tanodbayan, together fulfilled those functions. Although their work did not specifically concern racial discrimination, they helped to ensure the protection of civil and political rights by, for example, offering remedies in the event of failure of justice or graft and corruption and by helping to discourage abuse of its power by the Government.

12. One member of the Committee had asked why only Muslim traders benefited from the special provisions of Presidential Decree No. 93. In fact, the Filipinos of the Sulu Sea area, who were Muslims, traditionally traded freely with other peoples of the area, who were also Muslims, without being subject to any taxation. Out of respect for that traditional trade, the Philippine Government allowed a specific amount of barter goods from trade between those peoples to be brought in tax-free. The amount of goods and the number of people concerned were limited in order to avoid abuse of that privilege, which would surely be widespread.

13. As to how a distinction was made between ethnic and linguistic groups, the difficulty in answering that question stemmed from the fact that Filipinos were racially blind; it was they who had been the victims of racial discrimination. Over the centuries, slight variations had emerged in the languages spoken by the inhabitants of the 7,000 islands which made up the archipelago. A national language, based principally on Tagalog, and on other vernacular languages, was taught everywhere, but there were 80 dialects and seven regional languages, the latter having their own written literature. Anyone could speak any language at any time in any social or economic context. At the national level not only Filipino, but also English and frequently Spanish, were officially recognized. Muslim Filipinos were different only in that they professed a different faith; differences were perhaps social, economic or political, but not racial. Moreover, the Filipino

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people was the product of many races, and no distinction was made between them; while there were no racially pure Filipinos, the Malayo-Polynesian stock was predominant.

14. A question had been asked about what was meant by a cultural minority: one definition might refer to a people's reaction to its own environment, to life, so that a cultural minority was composed of people who reacted to their environment in accordance with their beliefs. Since 88 per cent of Filipinos were Catholic and 5 per cent were Muslims and since each group reacted to its environment on that basis, it could be said that the Muslims represented a cultural minority, while the Christians were the cultural majority. However, the law prohibited anyone from being questioned about his or her religion. The expression "cultural minority" also reflected the level of education of the people concerned. The Philippines currently had a literacy rate of 85 per cent and was seeking to attain 100 per cent, but in some areas - for example in the mountains - small groups adhering to such traditions as animism had received little education. Although their traditions were respected, efforts were made to enable them to enjoy the benefits of education. In that respect, the goals of the Commission on National Integration, which had originally been established for Muslims, and of the Presidential Assistance on National Minorities (PANAMIN), which dealt with other groups having different beliefs and cultural practices from the majority of the population, were the same.

15. With regard to the implementation of article 3 of the Convention, he stressed that no country had more faithfully applied United Nations resolutions against South Africa than the Philippines: it had no relations, political or commercial, with South Africa, and no South African national could obtain a Philippine visa without first renouncing the policy of apartheid in writing.

16. Mr. LAMPTEY said that he was still not satisfied with the explanation provided in connection with article 4 of the Convention. Paragraph 1 of the Philippine Government's comments on that article made two different points, first, that racial discrimination based on propaganda and organizations professing racial discrimination were non-existent in the Philippines and, secondly, that, there was accordingly no need to declare as punishable any act, practice, organization or institutions which had as their basis racial discrimination if they did not exist.

(Mr. Lamptey)

In the light of the definition of racial discrimination contained in article 1, paragraph 1, of the Convention, the statement in the report concerning measures to eliminate barriers between races and to discourage racial division was tantamount to acknowledging that racial discrimination, as defined in the Convention, did exist in the Philippines, and he agreed with Mr. Nettel, therefore, that the first part of the comments made by the Philippines was incorrect. On the second part, section III of Presidential Decree No. 1350-A provided that any violation of that Decree or of article 4, paragraphs (a), (b) or (c) of the Convention was contrary to the law and punishable. Thus, so long as Presidential Decree No. 1350-A was in effect, it was incorrect to state that there was no need to declare as punishable any act, practice, organization or institutions which had as their basis racial discrimination because they did not exist. However, everyone recognized that the Philippine Government was in the forefront in the fight against racial discrimination and apartheid.

17. Mr. ARCILLA (Philippines), replying to questions concerning the restoration of tribal lands, said that the tribal peoples lived in hilly areas where the land was not covered by titles or deeds but was part of the public domain. Over the years, people from the lowlands had gradually moved in to cultivate and claim those lands. It was those lands that were referred to as having been restored to their original owners, even though the tribal people had not originally held legal title to them.
18. With regard to comments about the shares - 1/13th of 1 per cent - of the total national internal revenue that was granted to the two autonomous regions, he explained that the Government appropriated 1 per cent of its total resources to the 13 regions of the country. Each region therefore received 1/13th of 1 per cent. He drew attention, however, to the significant increase in the contributions made by the national service agencies of the central Government to Regions IX and XII, as discussed on page 12 of the report.
19. With regard to the comments made by Mr. Nettel to the effect that the measures described in paragraph 5 of the comments on article 2, paragraph 1, of the Convention were prima facie evidence that racial discrimination existed in the Philippines, he said that that paragraph should be read in conjunction with

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paragraph 3 of the same comments. Paragraph 3 referred to racial discrimination-like practices and to the need for remedial measures, whenever necessary and appropriate. Paragraph 5 likewise referred to anything which "tends to strengthen racial division". In short, the measures in question were preventive in nature.

20. The word "overtly" in paragraph 3 of the comments on article 4, if given due weight, might also help to dispel the confusion to which Mr. Lamptey had referred. Paragraph 1 of that section stated that organizations professing racial discrimination were non-existent in the Philippines; the point being made in that paragraph was that, since such organizations did not exist, there was no need to ban them. Since nazism, fascism, neo-fascism and related ideologies based on religious intolerance, hatred and terror did not overtly exist in the Philippines, Presidential Decree No. 1350-A was intended as a preventive measure applicable to any covert organization of which the Government was not aware.

21. Mr. MORENO-SALCEDO (Philippines) observed that the fact that no case had ever been brought in any court and no complaint ever filed under Presidential Decree No. 1350-A confirmed the absence of racial discrimination in the Philippines. However, he would bring the apparent discrepancy mentioned by members of the Committee to his Government's attention.

22. The CHAIRMAN expressed his appreciation of the seventh periodic report and the valuable comments made by the representatives of the Philippines. The Committee had thus concluded its consideration of that report.

Mr. Moreno-Salcedo and Mr. Arcilla (Philippines) withdrew.

Seventh periodic report of Argentina (CERD/C/91/Add.8)

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

23. Mr. CORTI (Argentina) said that his Government's seventh periodic report was intended to reflect social and legal developments over the previous two years, to supplement the information provided in previous reports and to respond to the concerns expressed by members of the Committee during their discussion of the sixth periodic report. It contained detailed information on the situation of the aboriginal communities, the subject which had elicited most comment from members.

(Mr. Corti, Argentina)

It was to be hoped that the information provided would dispel any doubts which had been expressed by members.

24. During the Committee's discussion of the sixth periodic report, it had been asked whether there were any multiracial or integrationist associations in Argentina. A great many such organizations existed in Argentina and, by way of example, he read out a list of some 40 civic, fraternal, cultural and other organizations, which illustrated the great variety of institutions through which all various communities and nationalities in Argentina were able to operate freely.

25. His Government had not only condemned apartheid but had prohibited all sports contacts with the South African régime. In early 1982, after the preparation of the seventh periodic report, Aerolíneas Argentinas, the national airline, had discontinued all flights to South Africa as a further step to discourage such few trade contacts as still existed between Argentine nationals or private firms and South Africa.

26. Turning to the question of the implementation of article 4 of the Convention, he said that acts inspired by racial hatred were essentially acts of violence or insult aggravated by an impersonal hatred which could be racial, political or religious, and that was how such acts were dealt with in Argentine penal law. Availing itself of its exceptional powers under the state of siege, the Government had recently banned a number of pro-Nazi publications because they disseminated ideas based on racial superiority.

27. With regard to article 6, although no case of racial discrimination had occurred, the Supreme Court had recently rendered a judgement annulling an administrative act which it had found to be discriminatory. The case involved a young non-Argentine member of the Jehovah's Witnesses who had refused to salute the national symbols on the ground that to do so would violate her religious principles, and who had as a result been expelled from school. The Supreme Court had ruled that, as an alien, she could not be required to honour the national symbols and that the State could not avoid its obligation to provide an education for anyone who desired one. The case illustrated by analogy the remedies available to the population for the enforcement of their rights.

28. Mr. DECHEZELLES paid a tribute to the Government of Argentina for the very comprehensive and detailed report it had submitted in response to the many and varied questions which members had asked during the consideration of the sixth periodic report.

29. In considering that report, it was essential to bear in mind Argentina's complex history and geography. Argentina was a federal State each of whose provinces had its own government, police and public services, although the central authorities retained broad powers. The country was vast but sparsely populated and was a nation of immigrants. During the period from 1870 to 1930, some 6 million settlers had arrived from Europe, mostly from Italy, Spain and, in smaller numbers, from central Europe. That historical phenomenon explained the Government's praiseworthy policy of returning to the indigenous population lands taken from them during the period of territorial expansion and unbridled capitalism, when vast tracts of land had been distributed to prominent Argentine families and European financiers.

30. The current programme of distributing small plots of land to aboriginal citizens in life usufruct was commendable, and the small size of the plots was probably the result of the fact that Argentina was a land of latifundia which it would be difficult to break up. The aboriginal communities were widely dispersed throughout the national territory, a fact which made it difficult for Governments to devise a solution which avoided the extremes of integration and segregation. By settling an individual on a plot of land for life, the Government created the risk of segregation for that person. If, on the other hand, it refrained from taking such protective measures, the result might be integration, but the human cost would be high, given the harsh conditions in the crowded cities of the modern world.

31. Turning to article 4 of the Convention, he observed that the provisions of Argentine penal law, which made racial motivation an aggravating circumstance in connection with certain offences, fell far short of the requirements laid down in that article. It was to be hoped that the commission which was working on a reform of the Penal Code would recommend changes that would bring Argentine law into line with the Convention.

32. Mr. EVRIGENIS said that he agreed that Argentine penal law did not satisfy the obligations undertaken by States parties under article 4 of the Convention. Many discriminatory acts were not covered by the existing law and specific legislation needed to be enacted. While other provisions of the Convention might be subject to differing interpretations, article 4 was unambiguous in requiring specific legislation by States parties.

33. He requested further information on steps taken by the Government to give effect to the rights laid down in article 5, paragraphs 2 (vii), (viii) and (ix), of the Convention.

34. Mr. APIOU noted with satisfaction the measures taken by the Argentine Government to oppose racial discrimination and apartheid.

35. He shared the view that the penal law of Argentina did not satisfy the requirements of article 4 of the Convention, which expressly stipulated that States parties must declare an offence punishable by law the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, acts of violence or incitement to such acts against any race and the provision of any assistance to racist activities. In Argentina, racial hatred had been declared merely an aggravating circumstance. It was to be hoped that the Government would inform the Committee in its next report of steps taken to incorporate all the provisions of the Convention into domestic law.

The meeting rose at 1 p.m.