

631st meeting

Thursday, 14 July 1983,
at 10.45 a.m.

Chairman: Mr. INGLES

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 2) (continued)

Seventh periodic report of Pakistan (CERD/C/91/Add.33) (concluded)

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

1. Mr. ARAMBURU said he wished to know whether free interpretation was made available in judicial proceedings for persons speaking minority languages. Furthermore, it would be useful if the Committee were provided with information enabling it to compare the economic, social and cultural conditions under which the various population groups of Pakistan lived, in order to establish whether special measures needed to be adopted under article 2, paragraph 2, of the Convention.
2. Mrs. SADIQ ALI requested further information on the status of the 1973 Constitution under martial law.
3. She also wished to know in which regions or provinces the various tribal groups were concentrated or dispersed and what the reasons were for the decrease in the population of those groups in the period 1972-1981. Moreover, it would be useful to know what action had been taken to promote the interests of such groups under article 2, paragraph 2, of the Convention and article 38 of the Constitution of Pakistan.
4. The Committee had stated earlier, when referring to religious and linguistic criteria for population classification in cases similar to that of Pakistan, that it was difficult to find examples of purely religious minorities that did not have an ethnic base and that religious and ethnic origins often overlapped. It was considered by some that, historically, religious differences between Shia and Sunni Moslems had a racial base. Pakistan's geographical location particularly lent itself to such overlapping. She noted, in that connection, that a number of foreign students from a neighbouring country had been injured in the recent sectarian clashes that had taken place at Karachi. It would be interesting to know how the Government of Pakistan had responded to that situation and what specific

(Mrs. Sadiq Ali)

measures it had taken to bring about reconciliation and to deal with the grievances of the particular minority religious group concerned. It would also be of interest to know whether that minority group was adequately represented in public services, including the police force.

5. She wished to know the reaction of the Government of Pakistan to the proposal of King Fahd of Saudi Arabia that the systematic modification of Islamic law, rulings and practice, in accordance with the principle of ijtihad, should be revived. King Fahd's call for a return to ijtihad would involve, for instance, a change of attitude towards all major Islamic sects.

6. She would be interested to have information on the status of the Brahvi language and minority languages in general. Since the minority groups included Hindus, Parsees, Buddhists and Sikhs, who all had their own languages, she wished to know whether the Government provided any incentives or subsidies for the promotion of the teaching of those languages in schools.

7. Statistics on persons of Bangladesh origin still residing in Pakistan would be useful. Furthermore, she would appreciate information on the status of such persons, particularly those who might have applied for Bangladesh citizenship but, owing to procedural delays, might not yet have been repatriated. She wondered whether Pakistan had entered into any agreements with Bangladesh in an attempt to solve such problems as those relating to the property of persons who had left Bangladesh between 1965 and 1971.

8. Since a sizeable number of Pakistanis had migrated abroad, she wished to know whether the Government of Pakistan had entered into any agreements with host countries to protect the interests of migrant workers. She also wondered what action had been taken to meet the special needs of persons of Pakistan origin who had settled in developed countries and to preserve their cultural identity and links with Pakistan.

9. Further information on the province of Baluchistan was required in order to evaluate implementation by Pakistan of article 1, paragraph 4, and article 2, paragraph 2, of the Convention. She wished to know to what extent the Government accepted, in the case of Baluchistan, the concept of the fundamental right of self-determination, used in the sense of the right to be different. Furthermore, she wondered what steps were being taken to involve Baluchis in public service;

(Mrs. Sadiq Ali)

whether there were any traditional systems at the village level being used for self-management; what the level of literacy was in Baluchistan; whether there were life expectancy statistics for Baluchistan; what special measures were being undertaken to improve the physical quality of life in that province; and what the priorities were for the special Baluchistan integrated development plan.

10. It would be useful to have information on measures being adopted in an endeavour to strike a balance between the demands of the provinces and the metropolis, as well as information on the federal Government's financial allocations to the provinces. She also wondered what special plans there were to accelerate the development and industrialization of backward regions and to increase the representation of Punjabis, Sindhis, Pathans and Baluchis at the national level in the administration, the armed forces and the police force.

11. With regard to implementation of article 5 of the Convention, she wondered whether the censorship imposed in 1979 had been lifted to any extent. She would also be interested to know whether there were any restrictions on the movement of persons from one province to another. She wished to know whether there was any national legislation to control migratory movements and whether there were any bilateral agreements to deal with such problems amicably and in a humane manner. She also wondered what Pakistan's policy was with respect to refugees requesting political asylum.

12. With regard to implementation of article 6 of the Convention, she wondered whether under military rule a civil lawyer was permitted to defend the accused and whether the latter had access to counsel at State expense. Moreover, she wished to know how the members of the court martial were selected and whether they had legal qualifications.

13. It would be useful to know the Government's policy on the preservation of the cultural heritage of the various pre-Islamic civilizations represented in Pakistan, which fell within the scope of article 7 of the Convention. She would also be interested to know what activities and programmes were involved in the celebration of Minorities Week, and she would appreciate further clarification of the activities of the Ministry of Religious and Minority Affairs. Moreover, she wondered whether there were any special academies for the Pushtu, Sindhi and Baluchi literatures and cultures.

/...

(Mrs. Sadiq Ali)

14. She would be interested to know whether there were any national institutions that could inform the general public of the nature of their rights provided for in the Convention or to assist them in upholding their rights.
15. She wished to draw attention to the recent efforts made to strengthen mutual trust and goodwill in the sub-continent, which could not but be regarded as a positive step towards removing national, ethnic and religious prejudices.
16. Mr. SHAHI, responding to a point raised by Mr. Starushenko, said that Urdu had been adopted by popular consensus as the language for communication between the various population groups and was understood throughout the country, which did not mean that other languages were not accorded official recognition and used for judicial purposes. Urdu had become the medium of instruction, side by side with the various provincial languages.
17. The entire population of the North-West Frontier Province, in other words, approximately 10 million persons, spoke Pushtu. In addition, the Pathan population of Karachi and the migrants from the North-West Frontier Province and the tribal areas, numbering almost 1.5 million, also spoke Pushtu among themselves. There were academies for the various minority cultures, which meant that the pluralistic nature of the aspirations of the people of Pakistan was recognized.
18. The orders of the martial-law authorities were supreme. Certain articles of the Constitution had been superseded by martial-law regulations: the other provisions, which remained intact, related to the distribution of powers between the federal and provincial authorities, local government and the competence to legislate in various fields. The provisions relating to fundamental human rights had been modified to a certain extent by the martial-law regulations.
19. The Parsees, who spoke Gujarati, were of Persian origin and practised the Zoroastrian religion. There were under 10,000 Parsees in Pakistan. The Hindus spoke Sindhi. The Sikhs, of whom very few remained in Pakistan, spoke Punjabi.
20. There was a sizeable Bangladesh population in Pakistan, particularly in Karachi. The Bangladesh minority enjoyed the same rights, including property rights, as the other citizens of Pakistan and there was no ethnic tension between that minority and other groups. The province of Baluchistan occupied more than two fifths of the land area of Pakistan but had a small population, which was mostly nomadic and consisted of various tribes. The Government of Pakistan was

/...

(Mr. Shahi)

giving special attention to the problems of Baluchistan. Current programmes for the economic development of that province amounted to nearly \$200 million. A project to promote the mining of copper in Baluchistan at a cost of \$400 million to \$500 million could, if implemented, transform the situation in that province.

21. In carrying out its task the Committee should take special care not to exceed the bounds of its mandate by delving into political matters which concerned the very basis of the existence of States. Discussing the principle of self-determination of the constituent parts of newly independent States would bring into question the independence and territorial integrity of those States. Furthermore, the same approach could be applied to other States. The scope of the right to self-determination had been clearly defined in a number of General Assembly resolutions and the principle of self-determination had been applied in the struggle of colonial peoples against foreign domination. Many newly independent States had heterogeneous populations and their frontiers cut across tribal, linguistic, racial and other boundaries. The Committee should be extremely careful in discussing the right to self-determination within the context of the application of the Convention.

22. Mr. DEVETAK expressed satisfaction at the efforts undertaken by the Government of Pakistan at the international level to combat racism and racial discrimination and to promote international understanding and development. Article 2, paragraph 2, and article 5 (e) of the Convention were of particular relevance to Pakistan in view of its multilingual and multicultural society. In general it was not enough to rely on ideology or religion to solve problems arising from ethnic or linguistic differences. Concrete measures had to be taken in order to achieve the goals of equality for all. Pakistan's Declaration on Minorities was contained in annex II of that country's fourth periodic report (CERD/C/R.90/Add.22). He requested information on how paragraphs 2 to 4 of that Declaration had been implemented in Pakistan. What remedies were available to members of minorities in accordance with article 6 of the Convention when they felt their rights had been infringed? What concrete penal and other provisions protected the members of minority groups against racism and racial discrimination? Paragraph 3 of the Declaration stated that minorities were a sacred trust and that their rights and interests were fully protected in accordance with the law. The previous reports of

/...

(Mr. Devetak)

Pakistan did not refer to any laws designed to protect the rights of minorities. He asked what laws had been enacted in that regard. Specific information would also be appreciated with regard to the participation of the various linguistic, cultural and ethnic minorities in the decision-making process at all levels throughout the country. Lastly, he expressed satisfaction at the consistent efforts of Pakistan to maintain a constructive dialogue with the Committee.

23. Mrs. SADIQ ALI, referring to the statement made by Mr. Shahi, said that she had used the term "self-determination" as it was used by UNESCO to refer to the right to be different culturally. The Baluchi population was a very small minority living in a large province. She had raised the question of self-determination in order to find out how Pakistan would strike the proper balance between the need to develop Baluchistan and the need to safeguard the ethnic identity of the Baluchi minority.

24. The CHAIRMAN, speaking in his personal capacity, noted from paragraph 3 of the latest report (CERD/C/91/Add.33) that it had not been considered necessary by the Government of Pakistan to take any fresh legislative, judicial, administrative or other measures during the year 1980/1981, since the measures taken in earlier years to give effect to the Convention had been incorporated in the preceding periodic reports. Paragraph 22 of the sixth periodic report of Pakistan (CERD/C/66/Add.10) stated that the enactment of section 153A and 505(2) of the Pakistan Penal Code went a long way in fulfilling the requirements of article 4 (a) and (b) of the Convention. That paragraph implied that more could be done to fulfil the requirements of article 4 (a) and (b). Neither section 153A nor section 505(2) of the Penal Code declared incitement to racial discrimination an offence punishable by law. Furthermore, section 153A unduly limited the application of article 4 (a) and (b), to acts which disturbed or were likely to disturb public tranquillity or cause alarm. He expressed the hope that the Government of Pakistan would take the necessary measures to give full effect to article 4 (a) and (b), in accordance with its obligations.

25. Mr. HUSAIN (Pakistan) said that the comments and queries of the members of the Committee concerning Pakistan's seventh periodic report would be forwarded to his Government which would respond to them in an appropriate manner at the time the eighth report was submitted. Meanwhile, he would respond in a general and broad

/...

(Mr. Husain, Pakistan)

manner to some of the comments. The Government of Pakistan had not, as Mr. Partsch had suggested, misunderstood the question which had been asked concerning the ethnic composition of the country. As he had indicated in his introductory statement at the preceding meeting, the collection of data on ethnic origin had not been within the scope of the 1981 census. However, information had been collected on the main religious groups but it was still being processed. He had provided information which was available on the breakdown of the population by province in the hope that it would be of some use to the Committee. The information on religious minorities and the work of the Minority Affairs Division of the Ministry of Religious and Minority Affairs had been provided in response to a question asked by Mr. Devetak during the Committee's consideration of the sixth periodic report.

26. Also replying to Mr. Partsch, he said that exceptions to section 505 of the Penal Code were determined by the courts in keeping with the independence of the judiciary. With regard to the restriction of fundamental freedoms, he pointed out that an entire chapter of the Constitution was devoted to fundamental rights. Some of those rights were subject to reasonable restrictions in Pakistan in the interests of decency, public morals and public order, as they were in most other civilized countries. Reasonable restrictions commenced at the point where the individual's freedom encroached upon the freedom of others. Under article 199 (1) (c) of the Constitution, the high courts in Pakistan were competent to issue orders for redress in response to a complaint by any aggrieved person in respect of the enjoyment of fundamental rights. Moreover, under the Constitution, any law, or any usage or custom having the force of law, was void to the extent that it was inconsistent with fundamental rights.

27. Mr. Starushenko had expressed the view that the seventh periodic report did not provide the Committee with any new information. However, since the submission of the sixth periodic report, no substantive new developments having a bearing on the implementation of the Convention had occurred in Pakistan. That also explained the brevity of the report.

28. As to why Urdu had been made the national language when it was not the mother tongue of the majority, Mr. Shahi had provided useful background information, which he (Mr. Husain) wished to confirm. Urdu had been declared the official language in accordance with the wishes of the people by article 251 of the Constitution. Even

/...

(Mr. Husain, Pakistan)

though it was not the mother tongue of the majority, most people in Pakistan spoke and understood it. Mr. Starushenko had also asked how the interests of the various regions in the country were protected. Pakistan had a federal form of government under which there was a division of power between the central government and the provinces. The central legislature had the power to make laws with respect to any matter enumerated in either the federal legislative list or the concurrent legislative list. All other matters lay within the exclusive jurisdiction of the provincial legislatures, which could also make laws with regard to any matter on the concurrent legislative list. All provinces were represented in the central legislature on the basis of their population.

29. Mr. Starushenko had also asked how the rights of refugees were guaranteed. He assumed that Mr. Starushenko had in mind the 3 million Afghan refugees who had been forced to flee their country as a result of foreign military occupation and the denial of their fundamental human rights. Pakistan was providing temporary refuge to those refugees on humanitarian grounds and was doing everything possible to look after them in co-operation with the Office of the United Nations High Commissioner for Refugees and other international agencies, even though its efforts placed an unbearable burden on the country's meagre resources. It was to be hoped that conditions would soon be created in Afghanistan which would enable the refugees to return to their homes and enjoy their fundamental rights in their own country.

30. Mr. Dechezelles' suggestion that answers to questions asked by members should be incorporated into the body of the next periodic report would be referred to his Government and would no doubt receive careful consideration.

31. Replying to Mr. Aramburu, he said that in local courts arrangements were made to ensure that defendants had access to a lawyer provided by the State and that interpretation was provided so that they could understand the proceedings. As to measures taken to enforce article 2 of the Convention, he referred members to the statement he had made at the preceding meeting. Article 33 of the Constitution provided that the State had a duty to discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens, and article 38 obliged the State to secure the well-being of all citizens irrespective of their sex, caste, creed or race. Under the Constitution, a Council of Islamic Ideology had been established and was responsible for bringing the laws of the country into line with

(Mr. Husain, Pakistan)

the Koran and the Sunna. Since one of the fundamental principles of Islam was the prohibition of racial discrimination, the Council would naturally see to it that no law would in any way contravene the Convention.

32. Mrs. Sadiq Ali had inquired about the effects of martial law on the provisions of the Constitution relevant to the Convention. He assured the Committee that the country continued to be governed by the Constitution of Pakistan and thus all constitutional provisions prohibiting racial discrimination and measures taken to implement the Convention, as well as other safeguards made in the form of amendments to the penal law, remained intact.

33. With regard to Baluchistan, he pointed out that the population was 4,210,000 according to the 1981 census, and not 1.5 million as Mrs. Sadiq Ali had stated. The Government was fully cognizant of the need to take special measures to accelerate the development of that province, which for historical reasons had lagged behind the others. Under the five-year plan which had begun on 1 July 1983, special efforts were being made and additional resources allocated for the accelerated development of Baluchistan. More detailed information on the measures being taken would be provided in the next report.

34. He had referred at the preceding meeting to a number of constitutional and legislative provisions aimed at protecting the cultural, religious, economic and social interests of minority communities. Those provisions were adequate to ensure the protection of the interests of the various minority communities, and individuals who had grievances had an opportunity to seek redress through the courts. Mrs. Sadiq Ali had also asked about the representation of minorities in the Minority Affairs Division of the Ministry of Religious and Minority Affairs. The head of that Division was himself a member of a minority community.

35. With regard to the implementation of the Declaration on Minorities, about which Mr. Devetak had inquired, he drew attention to article 199 (1) (c) of the Constitution and to section 166 of the Penal Code, which provided that a public servant who knowingly disobeyed any law was subject to prosecution. That provision applied to acts of racial discrimination, which were prohibited under the Constitution. Article 36 of the Constitution provided that the State must safeguard the legitimate rights and interests of minorities, including their due representation in the federal and provincial services. Additional provisions for

/...

(Mr. Husain, Pakistan)

the protection of minorities were to be found in sections 153A and 505 of the Penal Code, the texts of which had been reproduced in the sixth periodic report. The Chairman had made a number of comments on the extent to which those provisions fulfilled the obligation imposed by article 4 of the Convention. He was certain that a detailed answer to those comments would be included in the next report. He assured the Committee that his Government was committed to making every possible effort to fulfil its obligations under the Convention.

36. Mr. PARTSCH observed that a great many of the questions which members had put would perhaps not have been asked if the very interesting material which the representative of Pakistan had provided in his introductory remarks had been included in the report.

Mr. Husain (Pakistan) withdrew.

Sixth periodic report of Iraq (CERD/C/76/Add.5)

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

37. Mr. MOHAMMAD (Iraq), introducing the sixth periodic report of Iraq (CERD/C/76/Add.5), said that it contained the judicial, constitutional and administrative measures undertaken by Iraq to implement the Convention and reflected Iraq's commitment to the elimination of racism and racial discrimination and the achievement of full equality among its citizens. The Iraqi Constitution gave special consideration to human rights; 20 of its articles dealt with the basis for the political, social and economic rights of citizens. Article 19 of the Constitution stipulated the fundamental condition of equality with no discrimination and with equal opportunity for all citizens. Article 25 guaranteed freedom of religion and article 36 forbade any incitement to racial hatred that would undermine national unity. Iraqi legislation made racist propaganda a punishable offence.

38. Iraq's international commitments reflected those same principles, as could be seen from the fact that it had become a party to a number of international human rights instruments.

39. Iraq had worked sincerely to guarantee the cultural rights of ethnic and religious groups and their right to publicly practise their religion. It would continue its efforts to combat racism in all its forms both at home and abroad and

/...

(Mr. Mohammad, Iraq)

to support the activities of the United Nations in that field, particularly during the forthcoming Second World Conference to Combat Racism and Racial Discrimination.

40. Mr. NETTEL said that the report of Iraq provided a wealth of information that gave a clear picture of the legal situation in Iraq as far as preventing racial discrimination was concerned. Of course, when a report presented such a good picture of a system not marked by legal deficiencies, the Committee tended to become more ambitious and to seek to penetrate beyond the curtain of legal provisions to the actual conditions in a country.

41. Part one B of the report, for example, stated that since the Convention was an integral part of Iraqi domestic legislation its provisions could be upheld directly by the courts without any implementing laws. However, the provisions of the Convention, were formulated in rather unspecific language. How, then, did a victim of racial discrimination plead application of the letter of the Convention before an Iraqi court? His intention was not to question the procedure mentioned in the report but rather to understand the mechanics of it.

42. Regarding article 4 of the Convention, Iraqi legal provisions seemed to cover article 4 (a) and (c), but not article 4 (b).

43. It was important, again, to delve into the real situation in the country with regard to the implementation of article 6 of the Convention and the system of legal redress discussed on page 9 of the report in connection with article 5 (b) of the Convention. Hardly any country, it should be said, ever provided the Committee with specific instances of judicial action taken on claims of rights violations, the reason given being generally that there had been no petitions for redress; and that reason was usually offered as proof of the absence of racial discrimination in a country. Such reasoning was specious: it was common knowledge that the ordinary citizen found his way only with difficulty through the intricacies of the law, and that the higher the court the more difficult it was to reach it. He would therefore like to know how the compensation described on page 9 of the report could actually be obtained in the case of racial discrimination. Such laws were rarely applicable to racial discrimination because it was difficult to prove any civil liability and also because racial discrimination did not necessarily entail bodily harm. Did Iraq provide compensation where no bodily harm had been sustained? Also, were there any specific laws providing redress against actions by a

(Mr. Nettel)

government official and, if not, could such an official be sued directly as could any private citizen?

44. In connection with the economic, social and cultural measures taken in Iraq with a view to the development of autonomy in Kurdistan, the report in part two B gave a number of figures on the Autonomous Region, among them a population growth rate of 4.27 per cent for the period 1968-1980. He wondered whether that reflected the growth of the Kurdish minority alone. If it referred to overall population growth in the Region, it was a less reliable indicator of minority development.

45. Mr. GHONEIM agreed that the report contained a great deal of information, presented, moreover, in strict accordance with the Committee's guidelines. It showed clearly that Iraq was intent on implementing the Convention.

46. He, too, had some questions regarding the Kurdish minority. He wondered whether the fact that the Kurds scattered in neighbouring countries were not at all at peace with their Governments affected the Kurds in Iraq. Like Mr. Nettel, he was surprised by the figure given in the report for population growth in the Autonomous Region, a rate far lower than normal in that area of the world. (In Egypt, for instance, there had been a 100-per-cent growth in the corresponding period.) He also wondered whether the increased number of doctors mentioned under health services were all Kurdish or if some were Iraqi or recruited from abroad. The report stated that the Autonomous Region had been neglected for some time, but the figures given did not provide a clear picture of the improvements that had taken place. What exactly, for instance, was meant by the nearly 400-per-cent growth in primary schools? That could mean that there were now three or four schools where there had been only one previously. Throughout, the report would have been clearer if actual numbers had been given rather than percentages.

47. The information provided by the report on the implementation of article 3 fell far short of what he himself knew that Iraq had been doing to combat apartheid and the racist régime in South Africa. Iraq would therefore do well to furnish more information in that regard.

The meeting rose at 12.55 p.m.