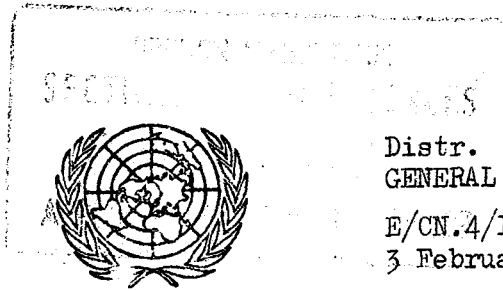


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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE
SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Report of the Group of Three established under the Convention

Chairman/Rapporteur: Mr. Oluyemi Adeniji (Nigeria)

I. INTRODUCTION

1. The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted by the General Assembly in resolution 3068 (XXVIII) of 30 November 1973, entered into force on 18 July 1976, on the thirtieth day after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. As at 3 February 1978, there were 38 States parties to the Convention. 1/

2. As required under article IX of the Convention, the Chairman of the Commission on Human Rights at its thirty-third session appointed a Group of three members of the Commission, consisting of the representatives of Cuba, Nigeria and the Syrian Arab Republic, who are also representatives of States parties to the Convention, to consider reports submitted by States parties in accordance with article VII. Article IX, paragraph 3, of the Convention provides that the Group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission on Human Rights, to consider reports submitted in accordance with article VII.

3. By its resolution 13 (XXXIII) of 11 March 1977, the Commission decided, inter alia, that the group of three members of the Commission appointed in accordance with article IX of the Convention should meet for a period of five days before the thirty-fourth session of the Commission to consider the reports submitted by States parties in accordance with article VII of the Convention; and invited States parties to submit to the group through the Secretary-General reports on the legislative, judicial, administrative and other measures that they have adopted and that give effect to the provisions of the Convention, as required under article VII.

1/ See E/CN.4/1277, annex I.

II. ORGANIZATION OF THE 1978 SESSION

A. Attendance

4. The Group held its 1978 session at the United Nations Office at Geneva from 30 January to 3 February 1978. The session was opened by the Director of the Division of Human Rights, representing the Secretary-General. The Group membership at the session was as follows:

Cuba	Mr. Carlos LECHUGA HEVIA*
	Mr. Humberto RIVERO ROSARIO**
	Mr. Julio HEREDIA**
Nigeria	Mr. Oluyemi ADENIJI*
	Mr. Kabiru AHMED**
Syrian Arab Republic	Mr. Dia-Allah EL-FATTAL*
	Miss Mawia SHEIKH FADLI**

5. The International Labour Organisation was represented at the session by an observer.

B. Election of officers

6. At its meeting held on 30 January 1978, the Group elected by acclamation Mr. Oluyemi Adeniji (Nigeria) as its Chairman/Rapporteur.

C. Agenda

7. At its meeting held on 30 January 1978, the Group adopted the following items, listed in the provisional agenda (E/CN.4/AC.33/L.1) submitted by the Secretary-General, as the agenda of its 1978 session:

1. Opening of the session by the representative of the Secretary-General
2. Election of officers
3. Adoption of the agenda
4. Rules of procedure
5. Consideration of reports submitted by States parties under article VII of the Convention
6. Report of the Group to the Commission on Human Rights.

* Representative

** Alternate

D. Rules of procedure

8. The Group agreed that it would apply to its proceedings the rules of procedure of the functional commissions of the Economic and Social Council, with the understanding that the presence of its three members would be required to constitute a quorum.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE VII OF THE CONVENTION

9. The Group had before it a note by the Secretary-General (E/CN.4/1277) concerning reports submitted by States parties under article VII of the Convention, as well as reports submitted, as of 1 February 1978, by the following 12 States parties to the Convention: Kuwait (E/CN.4/1277/Add.1), Panama (E/CN.4/1277/Add.2), the United Republic of Cameroon (E/CN.4/1277/Add.3), German Democratic Republic (E/CN.4/1277/Add.4), the United Arab Emirates (E/CN.4/1277/Add.5), Czechoslovakia (E/CN.4/1277/Add.6), Bulgaria (E/CN.4/1277/Add.7), Cuba (E/CN.4/1277/Add.8), the Syrian Arab Republic (E/CN.4/1277/Add.9), Senegal (E/CN.4/1277/Add.10), the Union of the Soviet Socialist Republics (E/CN.4/1277/Add.11) and Nigeria (E/CN.4/1277/Add.12).

10. A preliminary discussion was held on the mandate of the Group under the Convention, the modalities of its reporting to the Commission on Human Rights on its activities, the question of the periodicity of reports to be submitted by States parties under article VII of the Convention as well as on the advisability of considering the reports in the presence of the representatives of the States parties concerned.

11. Members of the Group emphasized the significance of the obligations which the States parties have undertaken, in particular under articles I, III and V of the Convention, to combat evils of apartheid nationally as well as at the international level. The significance of these obligations emanated from the fact that under article I of the Convention the crime of apartheid was declared to be a crime against humanity; and therefore all inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, were made subject to international criminal responsibility, irrespective of the motive involved. As provided for under article III, international criminal responsibility was to be applied to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts were perpetrated or in some other State. In accordance with article V of the Convention, such persons may be tried by a competent tribunal of any State party to the Convention which would automatically acquire jurisdiction over the person of the accused or they may be turned over to an international penal tribunal having jurisdiction with respect to those States parties which shall have accepted its jurisdiction. It was therefore pointed out that it would be necessary for all States parties to the Convention and the international community to maintain constant vigilance over the full and proper implementation of the provisions of the Convention. In this connexion, the importance of the mandate given to the Group under the Convention to monitor the implementation of its provisions was stressed by the members.

12. Members of the Group were of the opinion that in view of the importance of the Convention and the task entrusted to the Commission on Human Rights under article X (b), the States parties should submit their first reports under article VII of the Convention not later than two years after becoming parties to the Convention and their periodic reports at two yearly intervals, with the understanding that they may submit additional information to the Group at any time they wish in the intervening period. It was noted that under paragraph 2 of article VII, copies of the reports are to be transmitted through the Secretary-General of the United Nations to the Special Committee against Apartheid. The Group was unanimously of the opinion that in order to facilitate the task of the Special Committee, the Secretary-General should transmit copies of the reports from States Parties to the Special Committee together with copies of the report of the Group to the Commission on Human Rights.

13. The Group also discussed the usefulness of a continuing co-operation and dialogue between itself and the States parties as regards its consideration of periodic reports submitted by them under article VII. It therefore wishes to invite the States Parties, through the Commission on Human Rights, to consider the possibility of sending representatives to be present at future sessions of the Group when reports submitted by them are considered.

14. At its first session, the Group considered the reports of the 12 States parties listed in paragraph 9 above. It expressed its appreciation to these States parties for the early submission of their reports. It clearly emerged from the reports considered by the Group that the reporting States are keenly interested in the implementation of the Convention in order to eradicate the crime of apartheid and similar segregationist policies and their manifestations. The Group noted that some of the reports did not contain sufficient information to enable the Group to comment upon or to make observations as regards measures adopted to give effect to the provisions of the Convention; that in many reports, the information provided therein was not accompanied by the relevant legislative texts; and that there seemed to be a divergence of emphasis among the reports as regards the requirements of the Convention or the reporting obligations of the States parties. A suggestion was made by one member of the Group that consideration may be given at a future meeting to drawing up of a model legislation which would serve the States parties as a guide for implementation of the provisions of the Convention. The Group unanimously agreed, however, that its immediate task is to provide the States parties with general guidelines concerning the form and contents of the reports to be submitted by them under article VII of the Convention.

15. At its meetings held on 1-2 February 1978, the Group considered the draft general guidelines prepared by the Secretariat at its request, based on the provisions of articles I to VI and articles X (b) and XI of the Convention. In the light of the discussion, a number of amendments were agreed upon by the Group. The general guidelines as adopted by the Group are reproduced in the annex to this report.

IV. RECOMMENDATIONS

16. The Group recommends that these general guidelines should be sent to all States parties to the Convention, with the understanding that those States parties that had already submitted their first reports may decide, at their own discretion, whether or not they wished to submit a revised report, or additional information, in accordance with the general guidelines.

17. The Group also appeals to those States parties that have not submitted their reports under article VII of the Convention to do so as soon as possible.

18. The Group wishes to draw the attention of States parties, through the Commission on Human Rights, to the desirability of suggesting ideas in relation to the international penal tribunal referred to in article V of the Convention.

V. ADOPTION OF THE REPORT

19. At its meeting held on 3 February 1978, the Group considered its draft report on the work of its 1978 session. The draft report, as amended in the course of the discussion, was adopted unanimously.

ANNEX

General guidelines regarding the form and contents of reports to be submitted by States Parties under article VII of the International Convention on the Suppression and Punishment of the Crime of Apartheid

Under article VII of the International Convention on the Suppression and Punishment of the Crime of Apartheid, the States parties to the Convention undertake "to submit periodic reports to the Group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention".

In order for these reports to be of assistance to the Group established under article IX of the Convention, and subsequently to the Commission on Human Rights, in fulfilling the tasks entrusted to them under the Convention, the Group decided that it would be useful to advise the States parties regarding the form and contents of reports, and to request them to submit their periodic reports on the basis of the following guidelines:

1. Information on the legislative, judicial, administrative or other measures that have been adopted and that give effect to the following provisions of the Convention:
 - (a) That apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, */ are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security;
 - (b) That organizations, institutions and individuals committing the crime of apartheid are considered criminal.
2. Information on the legislative, judicial, administrative or other measures that have been adopted and that give effect to the following provisions of the Convention:
 - (a) The undertaking, as required under article IV (b) of the Convention, to adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article II of the Convention, whether or not, such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons;

*/ The text of article II of the Convention is appended hereto.

- (b) Article III of the Convention, that international criminal responsibility shall be applied, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which acts are perpetrated or in some other State, whenever they (i) commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the Convention; (ii) directly abet, encourage or co-operate in the commission of the crime of apartheid;
 - (c) The undertaking, as provided for under article XI of the Convention, to grant extradition in accordance with their legislation and with the treaties in force, in cases enumerated in article II of the Convention.
- 3. Information on the legislative, judicial, administrative or other measures that have been adopted and that give effect:
 - (a) To the undertaking, as required under article IV (a) of the Convention, to adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist and discriminatory policies or their manifestations and to punish persons guilty of that crime;
 - (b) To acquaint the public as widely as possible with the evils of apartheid and the text of the Convention using all the information and other media at their disposal.
- 4. Information on the legislative, judicial, administrative or other measures that have been adopted and that give effect to the undertaking, as required under article VI of the Convention, to accept and carry out in accordance with the Charter of the United Nations the decisions taken by the Security Council aimed at the prevention, suppression and punishment of the crime of apartheid, and to co-operate in the implementation of decisions adopted by other competent organs of the United Nations with a view to achieving the purposes of the Convention.
- 5. States parties should endeavour where possible to identify in their periodic reports individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crime enumerated in article II of the Convention, as well as those against whom legal proceedings have been undertaken by the State party to the Convention.

6. The reports should contain, as appropriate, decisions of the courts or the competent tribunal of the State party relating to cases falling within the scope of article II of the Convention, as provided for under article V of the Convention, as well as information relating to cases of extradition in accordance with article XI of the Convention.
7. The report should be accompanied by copies of the principal legislative and other texts referred to in the report. These will be kept in the files of the Secretariat and be made available in the original language to members of the Group or the Commission on Human Rights for consultation. It would be desirable therefore that, when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to the accompanying texts.

APPENDIX

Article II

For the purpose of the present Convention, the term "the crime of apartheid", which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
 - (i) By murder of members of a racial group or groups;
 - (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
 - (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
 - (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
 - (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
 - (d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
 - (e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
 - (f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.
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