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International Convention on the Elimination of all Forms of Racial Discrimination

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
Fifty_fifth session

SUMMARY RECORD OF THE 1357th MEETING
Held at the Palais des Nations, Geneva, on Wednesday, 18 August 1999, at 10 a.m.

Chairman: Mr. ABOUL_NASR

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eighth and ninth periodic reports of Colombia (continued) (CERD/C/332/Add.1)

1. At the invitation of the Chairman, the members of the delegation of Colombia resumed their places at the Committee table.

2. Mr. SHAHI, after expressing his appreciation of the report submitted, said that the Committee had learned, from a document submitted to it, about the situation of the U'wa indigenous community, whose members had threatened collective suicide on account of what they deemed inadequate consideration of their grievances stemming from the granting of a licence to Occidental of Colombia for petroleum exploitation, which would lead to environmental damage to some 200,000 hectares of their land. They had complained, inter alia, that consultation had been perfunctory and not with their real representatives, that court rulings against them had been unjust and that the situation seriously threatened their rights to self_determination, land ownership, cultural integrity and way of life in general. He cited paragraph 3 and subparagraph 4 d. of the Committee's General Recommendation XXIII, adding that the Committee had further emphasized the great importance of indigenous communities' links to their ancestral lands. In the light of those considerations, he would be grateful to have information about the current situation and the Government's intended actions.

3. Mr. MURILLO MARTINEZ (Colombia) said that his delegation appreciated the Committee's welcome and its appraisal of the report submitted as balanced and comprehensive.

4. Replying to members' comments, he said that some of their questions had touched on matters of official policy relating to land and displaced persons. The Government had recently drawn up guidelines for policy and action in that regard; although all targets could not yet be achieved, progress was being made, especially in learning more about the country's ethnic composition. Information was incomplete because the focus hitherto had been on communities known to have

experienced discrimination; but it was hoped that the next periodic report would contain a comprehensive analysis of all the country's ethnic groups. In any case, it should be possible to provide the Committee with an interim update.

5. As had been stated during the previous meeting, the Government was making every effort to reduce the impact of the continuing armed conflict on indigenous and Afro_Colombian communities. Its recently revised guidelines to deal with internal displacement focused on the ethnic aspect of matters such as land tenure, employment, education, health and respect for customs and traditions, and stressed the importance of dialogue with communities' traditional authorities. With regard to land ownership, the fact that the resguardos now accounted for over 30 million hectares, roughly 24 per cent of Colombian territory, showed that much progress had been made in establishing local land ownership rights. The task had been lengthy and arduous, but the Government felt that its strategies, implemented through joint efforts with the communities concerned, were achieving a positive outcome. Government policy with regard to Afro_Colombian communities had focused mainly on land allocation. Six collective title deeds had already been issued, making possible the acquisition of some 1,262,000 hectares, which should rise to some 2 million hectares in the next few months, on the basis of targets set forth in the National Development and Investment Plan. The World Bank, the Inter_American Development Bank and some other international bodies were collaborating in the work.

6. The Committee had voiced understandable concern about a number of reported development projects which were detrimental to indigenous and Afro_Colombian communities' enjoyment of their land and natural resources. With regard to the situation in U'wa territory, mentioned by Mr. Shahi, the Government had indeed taken seriously the threat of collective suicide. Following the U'wa representatives' appeal to the Inter_American Commission on Human Rights, a study had been commissioned, under the auspices of the Organization of American States, with a view to finding an equitable solution; the Government had welcomed its analysis and recommendations, and recognized the importance of establishing an adequate consultation mechanism. The U'wa community was currently reviewing a joint proposed solution which, it was hoped, would facilitate an amicable settlement. The Government felt sure that it was proceeding along the right lines on a matter which was indeed highly sensitive.

7. A disputed hydroelectric scheme involved two community groups. One had already signed an agreement, which contained adequate safeguards for the

community's natural resources; the other was still in the process of seeking a settlement, prior consultations having failed. It was hoped that a satisfactory outcome could be announced by 2 September next, the deadline set by the Constitutional Court for an agreement between the Government and the community concerned.

8. In general, the Government was anxious to ensure that prior consultation took place with regard to all such situations and had begun work to develop an improved consultation procedure; ethnic communities had been invited to express their views in that regard, and the Ministry of the Environment was collaborating with a view to drafting suitable legislation. Documentation on the matter would shortly be available.

9. The task of reviewing criminal law and drafting legislation that would conform to the Convention's provisions, to punish acts of racism and racial discrimination, had not yet been fully addressed; but some progress had been made. For example, a bill currently before Congress contained provisions to make some aspects of racism punishable. Under one part of the bill, punishment in respect of certain criminal acts would be increased if there was evidence of deliberate discrimination on grounds such as race, gender or disability. Another section provided that discrimination on racial or other grounds by persons in public office was punishable by sentences of between 5 and 10 years' imprisonment in addition to disqualification from public office for a similar term. The Office of the Attorney_General of the Nation, which was keen to have legislation as closely aligned to the Convention's provisions as possible, was following the bill's passage through Congress.

10. With regard to judicial remedies, a wide range of jurisprudence existed, as had been indicated in previous periodic reports. In view of the Committee's latest questions, however, his delegation would try to arrange a compilation in a form that the Committee could readily consult. There had been some recent instances of court judgements in favour of black and other communities, which pointed to progress; he would endeavour to have relevant updated information sent to the Committee.

11. Regarding the participation of ethnic groups in decision_making, a number of consultative bodies existed to deal with indigenous and black community affairs _ for example, the Bureau for Cooperation with Indigenous Peoples and Organizations, which reviewed matters such as the draft Mining Code, thus looking into matters of land and subsoil ownership. Similarly, the High_Level Advisory

Committee for the black communities was making headway in the implementation of recent legislation concerning collective land ownership, with the most recent meeting held only the previous week, under the auspices of the Ministry of the Interior, together with representatives of the black communities in question, to take account of their concerns. There were also advisory committees in various departments, whose mandate was, inter alia, to ensure that the legal requirements were implemented. Since 1993, all such legislative requirements had been developed in collaboration with the central and regional authorities and the communities concerned.

12. Statistics were recognized as highly important to the task of seeking equality of opportunities with regard to ethnic groups. Shortcomings had been recognized in the data from the 1993 census, particularly with regard to the enumeration of the black and indigenous members of the population, but the Government had been able to put the information to use. One task, for future census_taking, was to clarify the concept of ethnic group in order that the relevant census questions would be made clearer. A study for that purpose, commissioned by the Ministry of the Interior and the Directorate_General for Indigenous Affairs, had been carried out; its review should be completed in the year 2000. Its scope covered not only the number of members of the various ethnic groups but their requirements in matters such as employment, education and health care. The relevant document would be forwarded to the Committee as soon as it became available.

13. Regarding Colombia's ratification of the amendments to article 8, paragraph 6, of the Convention, he assured the Committee that, although the Government had not formally communicated its position, a law had already been adopted to that effect and was now before the Constitutional Court. The Government was still studying the possibility of making the declaration under article 14 of the Convention. The Committee would be informed as soon as a final decision was taken.

14. Article 30 of Act No. 70 of 1993 referred to punishment for and prevention of discrimination perpetrated by public administrators at the upper decision-making level against the black communities. The Act, which was not designed to establish specific penal sanctions, simply set out general policies, and that provision should be seen solely as an expression of the legislature’s concern. It did not deal with similar discrimination against indigenous or other communities because it was intended to cover the black communities exclusively.

15. The Government recognized that there was racial discrimination in housing. Certain studies had demonstrated that some groups, and especially Afro-Colombians, encountered discrimination when seeking to rent accommodation. That was a serious problem that the Government was trying to address through the policies it had adopted.

16. The delegation had no information on any discriminatory or unfair treatment in respect of access to the courts. That might be explained by the strengthening of legislation and procedures for the protection of black and indigenous groups, with the result that all Colombians were encouraged, on an equal basis, to make use of available remedies.

17. The Government had recently given an impulse to the establishment of Indigenous Territorial Entities (ETIs) in an effort to devolve power to indigenous peoples and decentralize the administration. ETIs exercised administrative functions more or less on an equal footing with the municipalities or town councils, thus permitting indigenous groups to manage their own affairs with full respect for their culture and ethnic identity. The 1991 Constitution recognized the right of such communities to be self-administering in accordance with their own customs. Recently, in a development which was unprecedented in the Americas, special indigenous courts had been set up with the same hierarchical rank as, and in parallel with, the ordinary courts. Indigenous people could therefore, if they so decided, choose to be judged by members of their indigenous groups in accordance with their own cultural and customary values.

18. The national statistics did not cover racial composition in the prison population. The delegation would convey the query to the appropriate authorities in the capital, explaining the Committee’s desire to use such statistics to understand trends which could reflect racial discrimination.

19. There were no legal constraints on participation in government by the various ethnic groups, but the Government recognized that some were at a historical disadvantage which was still reflected in practice. Therefore, the Constitution had established a special constituency for election to Congress, with a number of seats reserved for indigenous and other groups. The Constitutional Court had found the corresponding provisions to be unenforceable on a procedural point, and the Congress was currently studying a bill which would re-establish the special constituency.

20. The number of black and indigenous people holding posts in the various branches of government was not proportionally representative, but the Government had begun a process of empowerment whereby the various communities were given more authority. The efforts of those communities themselves would no doubt have a strong effect on the general situation in the long term.

21. Closing the gap between the black and indigenous populations and the rest of the population was a major undertaking, and the country had made considerable progress but still had a long way to go. The Government had made headway in introducing regulations and in implementing policies against structural discrimination. A census had recently been taken of the ethnic groups in San Andrés and Providencia, and the results were about to be announced.

22. The Government would be particularly attentive to the Committee's concluding observations and any recommendations it might make.

23. The CHAIRMAN said that the concluding observations would summarize in writing the dialogue conducted between the Committee and the delegation, and that any further points to be made by the Colombian Government could either be submitted in writing in accordance with article 9.2 of the Convention or be raised in Colombia's next periodic report.

24. Ms. McDOUGALL (Country Rapporteur), expressing her appreciation of the comprehensive, informative report and the openness to dialogue of the Government and its delegation, said that the fact that the State party had sent so distinguished a delegation reflected the seriousness with which it approached the dialogue with the Committee.

25. The Committee noted the extremely difficult situation in Colombia, and specifically the internal conflict and its repercussions for the human rights of everyone in the country, as well as the disproportionate impact it had on the indigenous and Afro-Colombian populations. The delegation's refreshing frankness concerning the persistence and even structural entrenchment of racial discrimination was highly appreciated.

26. Among the positive aspects encountered were certain constitutional provisions, the initiatives taken on 12 August 1999 and the inter-agency government advisory committees, commissions and mechanisms established for consultation with minority communities on subjects affecting their interests.

27. At the same time, the effect of those initiatives had been minimal at best. Minority groups, particularly the indigenous and Afro-Colombian communities, were politically marginalized, mired in extreme poverty and disproportionately subject to violence.

28. There were several subjects of concern to the Committee, the most noteworthy of which was perhaps the question of implementation. The numerous laws, decrees and regulations should have a real and practical impact on the situation in the country.

29. The CHAIRMAN thanked the delegation for the effort it had made, especially in the light of the problems facing the country. The Committee highly valued the quality of the report and the constructive dialogue with the delegation, and looked forward to working again with the State party when it submitted its next periodic report.

30. The delegation of Colombia withdrew.

Draft concluding observations concerning the thirteenth to fifteenth periodic reports of the Islamic Republic of Iran (continued) (CERD/C/55/Misc.32/Rev.3, future CERD/C/...)

31. The CHAIRMAN invited the Committee to resume its consideration of the draft concluding observations concerning the thirteenth to fifteenth periodic reports of the Islamic Republic of Iran.

Paragraph 14

32. Paragraph 14 was adopted.

Paragraph 15

33. Mr. RECHETOV suggested that the first line should be amended to read: "... continue to take further measures to promote ...". The end of the paragraph should be amended to read: "... the participation of these minorities in such development".

34. Mr. BANTON suggested the following wording for the first line: "... the State party should continue to promote ...".

35. Mr. RECHETOV and Mr. van BOVEN (Country Rapporteur) agreed with that

suggestion.

36. Paragraph 15, as amended, was adopted.

Paragraph 16

37. The CHAIRMAN asked what was meant by "training on the Convention".

38. Mr. van BOVEN (Country Rapporteur) suggested the wording: "teaching about the Convention".

39. Paragraph 16, as amended, was adopted.

Paragraph 17

40. Mr. RECHETOV asked whether the Islamic Human Rights Commission was really an administrative body, as implied in the paragraph.

41. Mr. van BOVEN (Country Rapporteur) said that he had used the term "administrative body" to indicate that the Human Rights Commission was not a judicial authority. The Human Rights Commission had a great many functions, including the consideration of complaints from individuals.

42. Mr. de GOUTTES suggested replacing "administrative bodies" with "other State institutions", which was the phrase used in article 6 of the Convention.

43. The CHAIRMAN suggested that the Committee should ascertain the exact status of the Islamic Human Rights Commission and use the correct term, whatever it was.

44. Mr. BANTON suggested the wording: "... courts, administrative bodies or the Islamic Human Rights Commission ..."

45. Mr. Banton’s amendment was adopted.

46. Mr. SHERIFIS and the CHAIRMAN asked why marriages between Afghan men and Iranian women were mentioned specifically.

47. Mr. SHAHI said that the problem was presumably that Afghan men in Iran were mostly refugees and non-citizens, who were expected to return to their own country eventually. The Committee had not made a specific reference of that kind before,

and he considered that it should be deleted.

48. The CHAIRMAN suggested that further information might be requested from the Government.

49. Mr. DIACONU said that, if the rules applied only to Afghan men who married Iranian women, they would be discriminatory. The paragraph merely asked for information about that subject. Perhaps it could be amended to read: "... as well as [information] on marriage between Iranians and foreigners ...".

50. Mr. van BOVEN (Country Rapporteur) said that he had learned from independent sources, including the Office of the United Nations High Commissioner for Refugees, that Afghan men and Iranian women, specifically, had encountered difficulties when trying to register their marriages and the births of their children. The issue had been included in the section "Principal subjects of concern" in his original draft of the concluding observations. He would delete the phrase "as well as on rules applicable to marriages between Afghan men and Iranian women" if members wished.

51. The CHAIRMAN said that there was always a danger that information received from independent sources might be unreliable. Many countries, including European countries and his own country, had restrictions on marriage between their citizens and foreigners.

52. Mr. SHAHI said that the phrase should be deleted.

53. It was so decided.

54. In reply to a question by Mr. GARVALOV, Mr. van BOVEN (Country Rapporteur) said that the "additional and up-to-date information" requested at the end of the paragraph should be included in Iran’s next periodic report. A special report was not required.

55. Mr. SHERIFIS, supported by Mr. SHAHI, suggested the wording: "Also, the Committee would like to receive further information ...".

56. Mr. Sherifis’ amendment was adopted.

57. Paragraph 17, as amended, was adopted.

Paragraph 18

58. Mr. SHERIFIS, in response to a comment by the CHAIRMAN, suggested the wording: "… the State party take steps to ensure the wide dissemination of the provisions of the Convention, as well as the State party's periodic reports …".

59. Paragraph 18, as amended, was adopted.

Paragraphs 19 and 20

60. Paragraphs 19 and 20 were adopted.

Paragraph 21

61. Mr. van BOVEN (Country Rapporteur) said that at least one member had indicated that the next report should be an updating report, rather than a comprehensive report, which he had requested because of the current interesting developments in the State party.

62. Following a discussion in which the CHAIRMAN, Mr. GARVALOV, Mr. SHERIFIS, Ms. ZOU Deci, Mr. DIACONU and Mr. de GOUTTES took part, the CHAIRMAN suggested that the words "a comprehensive" should be replaced by the words "an updating".

63. Paragraph 21, as amended, was adopted.

64. Mr. DIACONU recalled that he had suggested at the previous meeting that the various subjects of concern in section C, rather than always being attributed directly to the Committee, should be introduced by a more objective formulation.

65. The CHAIRMAN said that Mr. van Boven could make minor drafting changes along those lines in section C, and that the point was applicable also to future texts.

66. Mr. BANTON said, by way of a general remark on concluding observations, that he did not agree with Mr. Diaconu on a point he had made at the previous meeting, regarding the necessary connection between paragraphs 9 and 14 of the text just adopted. The Committee's final suggestions and recommendations need not, in his view, hark back to an explicit concern expressed earlier in concluding observations.

67. The draft concluding observations concerning the thirteenth to fifteenth periodic

reports of the Islamic Republic of Iran as a whole, as amended and subject to minor drafting changes in paragraphs 9 to 13, were adopted.

Draft concluding observations concerning the twelfth to fifteenth periodic reports of Romania (CERD/C/55/Misc.27/Rev.2, future CERD/C/.../Add...)

Paragraphs 1 to 8

68. Paragraphs 1 to 8 were adopted.

Paragraph 9

69. Mr. GARVALOV, supported by Mr. RECHETOV, said that it was not accurate to speak of the absence in Romania of legal provisions punishing individual acts of racial discrimination, for the delegation had drawn attention to quite a few in the Penal Code. They might not be sufficient, but there were some.

70. Mr. van BOVEN, supported by Mr. de GOUTTES and Mr. SHAHI, proposed amending the first sentence of paragraph 9 to read: "Concern is expressed that the provisions in Romanian legislation making punishable acts of racial discrimination by individuals are not fully in conformity with the provisions of article 2, paragraph 1 (d), of the Convention."

71. Mr. de GOUTTES said that he thought the more appropriate reference in that sentence would be to article 4 (a) of the Convention, rather than to article 2, but he would not insist.

72. The CHAIRMAN, supported by Mr. YUTZIS and Mr. BANTON, said that he preferred the reference as it stood.

73. Paragraph 9, as amended, was adopted.

Paragraph 10

74. Mr. RECHETOV proposed replacing the introductory phrase "A continuing subject of concern" by the phrase "Another subject of concern".

75. Mr. YUTZIS (Country Rapporteur) said that the same concern had in fact already been expressed in connection with the preceding periodic report of Romania.

76. Mr. BANTON accordingly proposed replacing the word "existence" before the phrase "of xenophobic attitudes" by the word "persistence".

77. Paragraph 10, as amended, was adopted.

Paragraph 11

78. The CHAIRMAN asked for an elucidation of the statement in the second sentence that the absence of measures in favour of the Roma could not be justified by Romania's current economic difficulties.

79. Mr. YUTZIS (Country Rapporteur) explained that the State party had claimed that the widespread poverty in the nation did not allow it to take affirmative action on behalf only of the Roma. It was an argument other States put forward as well.

80. The CHAIRMAN maintained that the text as worded was not clear.

81. Mr. GARVALOV, supported by Mr. YUTZIS, proposed deleting the phrase beginning "a fact which cannot be justified" to the end of the paragraph, and replacing it with the phrase "Romania's current difficult economic situation notwithstanding".

82. Mr. RECHETOV said that neither the text nor the amendment conveyed the position of the delegation properly.

83. Mr. SHERIFIS said that in the first sentence, he would delete the second clause, "this contributes to the continued prevalence of the negative and stereotyped image of the minority in the rest of society", because it implied that the Committee's particular concern was the bad image of the Roma.

84. The CHAIRMAN suggested that a decision on paragraph 11 should be deferred so that members could give their comments to Mr. Yutzis for possible revision.

85. It was so decided.

86. Mr. YUTZIS (Country Rapporteur) asked members to read paragraph 59 of the report of Romania in conjunction with paragraph 11.

Paragraph 12

87. Mr. DIACONU said that paragraph 12 had to be brought into line with paragraph 9 as amended, and accordingly suggested adding the word "fully" before the word "prohibit".

88. Paragraph 12, as amended, was adopted.

Paragraph 13

89. The CHAIRMAN said that he did not think the paucity of complaints and judicial decisions referred to in the second sentence necessarily indicated lack of public confidence in the judiciary. To go on to ask the State party to remedy the situation was to prejudge it.

90. Mr. YUTZIS (Country Rapporteur), pointed out that the text specifically read: "may indicate". The Romanian delegation had agreed that the complaint procedure was under_utilized, and the State party was being asked to remedy the paucity of complaints.

91. Mr. RECHETOV, supported by Mr. SHERIFIS, proposed toning down the second sentence by not referring to possible public misgivings. Accordingly, the phrase "a lack of confidence among the population in those organs and/or" after the verb "may indicate" should be deleted.

92. Paragraph 13, as amended, was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

93. The CHAIRMAN said that the Secretariat had received letters from the permanent missions of Zimbabwe and Ghana, stating that their experts would be unable to attend at the time scheduled for consideration of their periodic reports at the current session. He suggested that the Committee should postpone its consideration of the two reports until its next session in March 2000, and that the Secretary should inform the two Governments accordingly.

94. Mr. SHERIFIS agreed that it would be better to consider the reports in the presence of the States parties concerned.

95. Mr. van BOVEN observed that Zimbabwe had submitted its reports reasonably regularly, while some of Ghana’s reports had been considerably delayed. Nevertheless, he did not object to the proposed postponement.

96. The CHAIRMAN said that, if he saw no objection, he would take it that the Committee wished the Secretary to write to the Governments of Zimbabwe and Ghana, inviting them to participate in the consideration of their periodic reports at the Committee's fifty-sixth session in March 2000. The letter to Ghana should emphasize that the Committee was counting upon the presence of an expert delegation.

97. It was so decided.

The meeting rose at 1 p.m.