

decided by them, examining the evidence, and generally reviewing the correctness of the decisions; though judges are accountable, their accountability does not extend to their having to account to another institution for their judgements; compelling appearances would seriously erode not only the independence of the judges concerned but also the institutional independence of the judiciary; such compulsion could violate the immunity conferred on judges; and, finally, if judges are subjected to public examination in the glare of the media, public confidence in the judiciary could be undermined, bearing in mind that prior to 1994 there was no written constitution in South Africa with an entrenched bill of rights for judges to apply, and on the basis of which to rule on the legality of legislation.

Racism and racial discrimination, Special Rapporteur on: (E/CN.4/1998/79, paras. 16, 41)

The report refers to information related to the legacy of apartheid, inter-ethnic conflicts and problems related to massive immigration. Reference is made to the imposition of restrictions on immigration which are considered by some to be discriminatory towards foreigners. Information was also received related to anti-Semitic acts of violence, particularly in Cape Town, in July 1997 when approximately 2,500 persons claiming membership of an organization called Muslims against Global Oppression (MAGO) are said to have demonstrated in front of the premises of the Israeli Embassy, shouting anti-Semitic slogans, and displaying notices insulting the Jews. In another incident, a Jewish study centre and library were allegedly set on fire.

The Special Rapporteur (SR) visited South Africa from 24 February to 5 March 1998. The interim report to the 1998 General Assembly (A/53/269, paras. 6–10) refers to the South African television slogan “Simunye – We Are One” and the unifying concept “The Rainbow Nation”. The SR noted that the effects of change are already seen in the reorganization of the army and the police, which have developed affirmative action and equal opportunity programmes. Other points noted include: that leadership teams at the ministries and of the provincial and municipal administrations increasingly reflect the racial and ethnic composition of the country; the educational system is in the process of being reformed; with the adoption of Curriculum 2000 the falsehoods proclaimed by apartheid are to be eradicated from teaching tools; and the Employment and Equity Act is under preparation.

The report acknowledges that resistance remains on the part of some administrative sectors that still support racist views, and notes: opposition to the presence of Blacks at some institutions, even public ones; resistance in the private sector to the integration of members of previously disadvantaged groups, which is hampering the emergence of African economic operators; the fact that the press remains largely in the hands of the supporters of the old regime who disparage the action taken by the government; plans to remedy the lack of legislation punishing racist acts and racial discrimination; the increase in xenophobia, directed particularly against Africans

from countries bordering on South Africa and from further afield; and that this xenophobia is the result of both the long isolation of South Africans from the rest of Africa and the fear that the migrants (both legal and illegal) and refugees will come and take advantage of the dividends of liberation before South Africans themselves have benefited from them. The SR stated that the attraction that South Africa’s relative prosperity exerts on migrants from countries experiencing social or economic crises, combined with liberal legislation on the right of asylum, may mean that there is a possibility that the development plan introduced by the government will meet with failure. The government indicated that it is aware of these problems and is seeking appropriate solutions.

Toxic wastes and products, Special Rapporteur on: (E/CN.4/1998/10/Add.1, “Comments received from States”)

The addendum to the main report contains the response of the government to information included in the Special Rapporteur’s (SR) report to the 1997 session of the Commission on Human Rights (E/CN.4/1997/19). With regard to “poor household practice” within a factory operated by Thor Chemicals SA (Pty.) Ltd. the government stated: all charges of homicide against three employees were dropped by the State Prosecutor; the company was found guilty of contravening the Machinery and Occupational Safety Act of 1983; the import of spent mercury catalyst by Thor Chemicals was known and permitted and there was no illicit dumping or trafficking; the imports were terminated in 1992; the majority of imported material remains stockpiled on the company’s premises, and the future treatment of this material was the subject of a Commission of Inquiry that was appointed in March 1995; the Commission was to recommend the best practical environmental option to deal with the problem of mercury containing catalyst and/or waste currently present on Thor’s premises; and, the Commission was also to investigate regulation and enforcement relating to the monitoring and control of mercury processing, and recommend the best option to minimize risks and to protect workers’ health and environment. The government noted that the first phase of the Commission’s work had been concluded and a report would be submitted to the President. (See below for more information on the Thor Chemicals case.)

The Special Rapporteur visited Pretoria, Johannesburg, and Cape Town from 10 to 16 August 1997, followed by visits to Kenya and Ethiopia. The section of the report concerning the visit to South Africa (E/CN.4/1998/10/Add.2, paras. 8–33) notes that a ban on the importation of hazardous wastes was implemented after 1989 and refers to a number of points contained in the five-volume study Hazardous Waste in South Africa which was published in 1992. Problems associated with waste management set out in the study included, *inter alia*, that: few industries had waste management strategies or planned for waste management before start-up; awareness of hazards was low, but there was an awareness that facilities and practices were inadequate; there were sig-