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HUMAN RIGHTS COMMITTEE

Sixty-first session

SUMMARY RECORD OF THE 1616th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 20 October 1997, at 10.30 a.m.

Chairperson: Ms. CHANET

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The meeting was called to order at 10.40 a.m.

OPENING OF THE SESSION

1. The CHAIRPERSON declared open the sixty-first session of the Human Rights Committee. She welcomed Mr. Zakhia from Lebanon, who had been elected a member of the Committee, and invited him to make the solemn declaration under article 38 of the Covenant.

2. Mr. ZAKHIA undertook to perform his functions impartially and conscientiously.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CCPR/C/126)

3. The agenda (CCPR/C/126) was adopted.

STATEMENT BY THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

4. Mrs. ROBINSON (United Nations High Commissioner for Human Rights) said that the Committee had played a leading and often pioneering role in developing procedures and working methods that had helped to make the treaty system as a whole more effective and had been important, in the first instance, in promoting the effective implementation of the Covenant itself. She had in mind in particular its practice of adopting concluding observations after the consideration of each State party's report, asking States parties to submit special reports when warranted by circumstances, and the hard work involved in the elaboration of the Committee's very valuable general comments. She was also familiar with the Committee's impressive work under the First Optional Protocol, which constituted by far the best known and the most highly developed of the existing United Nations human rights complaints procedures, and with the Committee's efforts to strengthen the impact of its decisions through the follow-up procedure it had developed over the past few years.

5. The international human rights treaty system was clearly at the core of the United Nations human rights programme, and its role was becoming ever more essential as the number of accessions and ratifications continued to increase. Sadly, however, the fact that human rights were receiving greater international recognition must not obscure the underlying reality of massive and widespread violations of human rights and the intense human suffering which marked the current era. Thus, on the eve of the fiftieth anniversary of the Universal Declaration of Human Rights and the stocktaking opportunity provided by the fifth anniversary of the adoption of the Vienna Declaration and Programme of Action, the challenge to the international community and to every human being to be more effective in promoting and ensuring respect for human rights was greater than ever.

6. In addressing that challenge, her intention was to take a balanced and broad approach which emphasized civil and political rights, economic, social and cultural rights, and the right to development, as well as women's and children's rights. While in New York in September 1997, she had met with a large number of government leaders, foreign ministers and regional groups, to whom she had explained that approach, which had been well received. She had also had the chance to see at first hand how deeply the Secretary-General was

personally interested in human rights and how much importance he attached to them in the context of his overall responsibilities in promoting peace and security. One issue of immediate concern to him and to her continued to be the difficult situation in the Democratic Republic of the Congo and, more generally, in the Great Lakes region as a whole. It was to her mind essential, while addressing the economic and social rights of the people of the region, to break the cycle of impunity when it came to such massive violations of human rights.

7. The current situation in Algeria was another cause for major concern. She had received information from the chairpersons of several treaty bodies, the special rapporteurs concerned and other mechanisms of the Commission on Human Rights, and had asked them for their opinions so as to have an assessment of the situation by United Nations human rights experts.

8. Another development, of a different nature but still troubling, was the announcement on 25 August 1997 that the Government of the Democratic People's Republic of Korea had decided to withdraw from the Covenant. Such an action was unprecedented in international human rights law and clearly raised serious questions as to its conformity with existing international law. On the basis of a preliminary review, it appeared that in the absence of appropriate provisions in the Covenant for termination, withdrawal or denunciation, the State party's attempt to do so could only be considered in the light of article 56 of the 1969 Vienna Convention on the Law of Treaties. She understood that the Committee would consider that issue at its current session, and she looked forward to receiving its views on the matter, which she would study jointly with the Office of Legal Affairs in New York.

9. In the months ahead, efforts would have to be intensified to disseminate information about the human rights instruments more widely at the international, national and local levels, and to promote universal adherence to the Covenant, its Optional Protocols and the other treaties, and to uphold the integrity of the human rights treaty system.

10. In closing, she reiterated her pledge of strong support for the Committee's important work. In the exercise of her functions, she intended to keep herself closely informed of its activities and would ensure that it received all the support it needed, in particular, in establishing a system that would lead to more effective implementation of the recommendations made by the Committee, and indeed by all the treaty bodies.

11. The CHAIRPERSON thanked the High Commissioner for Human Rights for her interest in the Committee's work. The Committee welcomed her arrival at the head of the human rights secretariat, which was going through a difficult crisis. The Committee had made every possible sacrifice in that regard, giving up certain languages for its work, reducing the number of its Working Groups and modifying its methods of work. Its task was nonetheless arduous; it hoped therefore that it could count on the invaluable aid of the secretariat and preserve that essential tool, which moreover worked. In that respect, too, the Committee was particularly pleased with the arrival of the High Commissioner for Human Rights.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

12. The CHAIRPERSON drew the attention of the members of the Committee to the programme of work, which had been submitted to them in the form of a table, in an informal document in English without a symbol; she invited them to comment on it.

13. Mr. KLEIN said he had made progress in drafting a general comment on article 12, but would not submit a text to the Committee until its March 1998 session. The Committee would therefore not have a draft general comment to consider at the present session.

14. Ms. EVATT asked what the consideration of methods of work under article 40, which had been scheduled for Wednesday, 22 October, would entail.

15. The CHAIRPERSON said that, since Mr. Klein would not submit his draft general comment until the spring 1998 session, the meeting of Wednesday, 29 October, which had been set aside for general comments, could be devoted to communications. In reply to Ms. Evatt, she said that the methods of work under article 40 covered such subjects as the situation created by the decision of the Democratic People's Republic of Korea, which had just been mentioned by the High Commissioner. In addition, she would report to the Committee on developments since its previous session, and the Committee would also consider the report of the meeting of chairpersons of treaty bodies and the draft guidelines for members, which had been prepared by Mr. Bhagwati. The reports of the six States parties would be considered in the order indicated in the programme of work.

16. Mr. POCAR asked if the report on the meeting of chairpersons of treaty bodies would be available before the end of the session so that the Committee could consider it during the last week.

17. Mr. TISTOUNET (Secretary of the Committee) said that the report existed but was to be revised before being submitted to the General Assembly. However, the secretariat could make an unrevised version available to the Committee.

18. At its July 1997 session, the Committee had taken a series of decisions calling on nine States parties to submit their initial reports, which were overdue, as soon as possible. Four reports had been scheduled for the present session - those of Cambodia, Grenada, Israel and The former Yugoslav Republic of Macedonia - and five for the following session: Albania, Angola, Benin, Côte d'Ivoire and Seychelles. The secretariat had immediately sent a note verbale to the permanent missions concerned and had received two replies, one from Israel and the other from The former Yugoslav Republic of Macedonia. The latter country, whose permanent representative would address the Committee directly, wished consideration of its report to be postponed until the March 1998 session, and Israel had announced that its report would also be ready for that session.

19. Mr. BUERGENTHAL said that since nothing had been received from the other States parties, he wondered whether they should not be asked specifically for a reply to the request contained in the secretariat's note verbale.

20. The CHAIRPERSON said that the secretariat would provide an update on the various countries of which information had been requested. She took it that the Committee wished to adopt the proposed programme of work.

21. It was so decided.

22. Lord COLVILLE (Chairman/Rapporteur of the Working Group) said that the Working Group, composed of Mr. Bhagwati, Mr. El Shafei, Ms. Evatt, Mr. Yalden and himself, had been instructed to deal both with periodic reports and with communications, a very arduous task in which it had benefited from the outstanding assistance of members of the secretariat. It had drawn up lists of issues for the six countries whose reports were to be considered by the Committee. Those lists were shorter than in previous sessions. The Working Group had deliberately left certain questions aside, even though it was well aware that they were not without importance, since the Committee barely had two meetings for the consideration of each report. The Working Group had also considered nine communications, three of which, having been declared admissible, would not be sent back to the plenary Committee. It had prepared draft views on four communications and had recommended declaring inadmissible another communication which the Committee should consequently consider. It was also transmitting to the Committee, for consideration, a ninth communication, the peculiar history of which called for the opinions of all members.

23. The Working Group had also dealt with various documents. Shortly after its consideration of the periodic report of Georgia, the Committee had received a letter from the Under-Secretary of the National Council on Human Rights informing it that she had been designated by President Shevardnadze to monitor implementation of the decrees intended to strengthen the exercise of fundamental rights. It was now clear that that was an official letter, and it would be appropriate for the Chairperson to thank the Georgian Government and take note of the appointment. At its previous session the Committee had also received a document from the local authorities of the Department of Antioquia in Colombia, contesting some of the concluding observations adopted at the fifty-ninth session concerning that country's periodic report. Some members of the Committee had directly received another document, which seemed to have originated with the Colombian Government. Neither of those two documents could be considered official, and it did not seem necessary for the bureau to take any action.

24. That was not the case with the letter sent by Mr. Joinet, a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, about the importance of the remedies of habeas corpus and amparo. Mr. Joinet had suggested that the Committee should consider revising its general comment on article 4 of the Covenant, a suggestion which the Working Group had approved. The bureau should inform Mr. Joinet accordingly.

25. The Working Group had also had before it a document prepared by Ms. Evatt on follow-up to the recommendations contained in the concluding observations made by the Committee after its consideration of periodic reports. Given that the task force set up by the Chairperson was responsible for that matter among others, it would be preferable to await the outcome of its deliberations before beginning to consider the question.

26. The Working Group had considered at length the draft guidelines prepared by Mr. Bhagwati for members and had considerably amended them; the amended draft, which bore the symbol CCPR/C/61/GUI, should be considered as having received the support of the five members of the Working Group. In principle the five also approved the idea of giving the Committee guidelines, as long as they did not deviate unnecessarily from those which might be applicable to other treaty bodies. The Working Group therefore considered that if they received the approval of all members of the Committee, the "guidelines for members" should be transmitted to the next meeting of chairpersons of treaty bodies, in order to ensure their compatibility with any other guidelines. The members of the Committee would note that the guidelines differed as between the consideration of communications and the consideration of periodic reports. They were much stricter in the former case; in the latter case, much attention was devoted to the question of the participation of Country Rapporteurs and "thematic" rapporteurs during the consideration of State party reports.

27. The Working Group had also considered a document on the cost of organizing sessions in Geneva and in New York.

28. The CHAIRPERSON invited the Committee to consider the draft lists of issues prepared by the Working Group.

29. The Committee had decided to begin with Senegal.

30. Lord COLVILLE (Chairman/Rapporteur of the Working Group), introducing the list of issues (CCPR/C/61/Q/SEN/2) to be taken up in connection with the consideration of the fourth periodic report of Senegal, said that in that list, as in all the other lists, emphasis was placed on concrete measures that had been taken to bring legislation into conformity with the Covenant and on the results of any inquiries that might have been conducted.

Question 1

31. Mr. POCAR noted that a general question was asked at the very beginning of the list about measures "taken to bring the laws and their enforcement into line with the Covenant, in conformity with the previous concluding observations of the Committee". He was afraid that that might give rise to an interminable treatise on legislative and regulatory measures adopted in all areas. It would be better to call the attention of the delegation of Senegal, through a footnote or otherwise, to the need to outline the manner in which it had followed up the Committee's concluding observations on each of the issues dealt with.

32. Mr. YALDEN said he understood Mr. Pocar's objection but explained that the Working Group had wished expressly to ask for more details on concrete measures in order to avoid having the delegation repeat all the legislative provisions on each issue without giving any concrete fact, as it had done during consideration of the third periodic report.

33. After an exchange of views in which Ms. EVATT, Mr. BHAGWATI, the CHAIRPERSON, Mr. EL SHAFEI, Mr. PRADO VALLEJO and Lord COLVILLE took part, the CHAIRPERSON said that a consensus seemed to have emerged to delete question 1 as contained in the text, on the understanding that a sentence

would be added, either at the end of the text or in a footnote, asking the delegation for specific details on follow-up to the recommendations contained in the Committee's concluding observations.

34. It was so decided.

Questions 2 to 4

35. Questions 2 to 4 were adopted without amendment.

Questions 5 and 6

36. The CHAIRPERSON said that a clear distinction should be made between issues specifically falling under article 9 (liberty and security of person and pre-trial detention) and those relating to post-trial detention. The last sentence in question 6 should therefore be moved to the end of question 5, and question 6 should be entitled, "Conditions of imprisonment and detention (art. 10)".

37. The proposal was adopted.

38. Questions 5 and 6, as amended, were adopted.

Questions 7 and 8

39. Mr. SCHEININ suggested reorganizing the two questions. The first point under question 8 would be more appropriately placed in question 7, and the Committee could add a question on the effects of the prohibition of abortion on maternal mortality. Also in question 8, the reference to the pertinent articles of the Covenant should be expanded. Female genital mutilation and the prohibition of abortion were in fact relevant to articles 3, 6 and 7.

40. Mr. YALDEN supported Mr. Scheinin's suggestion and proposed repeating, in the second sentence in question 7, the wording that had been adopted by the Working Group but did not appear in the draft, which would mean replacing the words "sectors in which discrimination persists" by "all discrimination".

41. The CHAIRPERSON said she understood that all members of the Committee wished to recast questions 7 and 8 and to adopt the amendments proposed by Mr. Scheinin and Mr. Yalden. She would ask Lord Colville to draft a new text to replace the current questions 7 and 8, on the understanding that the two questions might or might not be merged into a single paragraph, depending on what appeared to be the most advisable course.

42. It was so decided.

Questions 9 to 12

43. Questions 9 to 12 were adopted without amendment.

Question 13

44. Mr. PRADO VALLEJO said it was not so much the practice regarding censorship that interested the Committee as the effect it might have on the exercise of article 19 of the Covenant.

45. Lord COLVILLE (Chairman/Rapporteur of the Working Group) proposed adding the following words: "... and their effect on the exercise of article 19 of the Covenant".

46. Lord Colville's proposal was adopted.

Questions 14 and 15

47. Questions 14 and 15 were adopted without amendment.

Question 16

48. Mr. PRADO VALLEJO suggested that, in the Spanish text, the unsuitable word "posturas" should be replaced by the accepted term "observaciones".

49. Question 16, as amended by Mr. Prado Vallejo, was adopted.

Question 17

50. Question 17 was adopted without amendment.

51. The CHAIRPERSON said that although most of the questions on the list had been adopted as to their substance, there remained matters of form to settle, namely, the recasting of questions 7 and 8 and of the existing question 1. She asked Lord Colville to finalize the list with the help of the secretariat, along the lines indicated by the Committee.

52. The list of issues (CCPR/C/61/Q/SEN/2) to be taken up in connection with the consideration of the fourth periodic report of Senegal, as amended, was adopted.

53. The CHAIRPERSON invited the members of the Committee to consider the list of issues (CCPR/C/61/Q/JAM/3) to be taken up in connection with the consideration of the second periodic report of Jamaica.

54. Lord COLVILLE (Chairman/Rapporteur of the Working Group) drew the attention of members to the fact that the questions on the list basically covered subjects which the Committee had already raised on many previous occasions during its consideration of communications sent by Jamaicans under the First Optional Protocol. However, the list contained several questions on recent developments, in particular, the so-called "Tivoli Gardens" incident and the prison disturbances of August 1997, which were mentioned in paragraphs 2 and 6 respectively. The disturbances, which had caused 16 victims among the prisoners, had started following a decision by the prison authorities to distribute condoms to prisoners, which had led to a strike by prison staff. He pointed out that under Jamaican criminal legislation homosexual acts, including acts in private, constituted a criminal offence.

55. He also drew attention to the importance of question 9, which referred to an extremely serious situation, namely, the fact that the Jamaican authorities had decided in August 1997 to reduce the period of time during which the consideration of a communication by the Human Rights Committee had suspensive effect. Under the new provisions, if the Committee had not considered a given communication within six months, the death penalty would be carried out. That was a critical decision, to which the Committee must react.

56. The CHAIRPERSON endorsed Lord Colville's views; the two issues raised in question 9 were of great importance, particularly in view of the large number of communications addressed to the Committee by Jamaican nationals.

57. She invited the members of the Committee to adopt the list of issues (CCPR/C/61/Q/JAM/3) to be taken up in connection with the consideration of the second periodic report of Jamaica paragraph by paragraph.

Questions 1 to 3

58. Questions 1 to 3 were adopted without amendment.

Question 4

59. The CHAIRPERSON proposed that a reference to the corresponding paragraphs of the report (CCPR/C/42/Add.15) should be added.

60. The proposal was adopted.

Question 5

61. Ms. EVATT proposed asking what was the average length of pre-trial detention.

62. The proposal was adopted.

Question 6

63. Mr. PRADO VALLEJO considered that the Committee should not simply ask the Jamaican authorities what were the factors and difficulties impeding implementation of article 10 of the Covenant, but should also ask what concrete measures had been taken to resolve the very serious problem of conditions of detention. The first question in paragraph 6 should consequently be reformulated.

64. The proposal was adopted.

65. Mr. LALLAH suggested that, logically, question 6 should be placed immediately after question 3.

66. The proposal was adopted.

Questions 7 and 8

67. The CHAIRPERSON asked why the Working Group had focused its questions only on the provisions of article 14, paragraphs 3 (d) and 5, of the Covenant.

68. Lord COLVILLE (Chairman/Rapporteur of the Working Group) explained that the Working Group had been careful to highlight the most frequently occurring aspects of the Committee's concerns with regard to article 14, namely, how the procedure worked in practice and the right to defence. Lawyers in London who dealt with questions concerning Jamaicans regularly encountered two major difficulties: convicted prisoners were ineligible for legal aid in submitting appeals to the Privy Council or filing constitutional motions, and defence attorneys assisting their clients under the legal aid system often lacked the required competence to carry out their tasks efficiently. Furthermore, the considerable slowness of the trial and appeal procedures in Jamaica should be borne in mind. Given the time limits imposed on the consideration of State party reports, the Working Group had felt it would be better to concentrate on those difficulties, which were as serious as they were frequent.

69. Mr. BHAGWATI proposed adding a reference in question 7 to article 14, paragraph 3 (c), of the Covenant; the Committee had often noted during its consideration of communications from Jamaica that the criminal trial procedure was extremely lengthy in that State party.

70. Mr. Bhaqwati's proposal was approved.

71. Mr. KLEIN proposed that question 10, which also dealt with the implementation of article 14 of the Covenant, should follow questions 7 and 8 of the list of issues.

72. Mr. LALLAH supported Mr. Klein's proposal, but wondered whether it might not be useful to specify which paragraphs or subparagraphs of article 14 of the Covenant were envisaged in question 10.

73. Lord COLVILLE (Chairman/Rapporteur of the Working Group) said he also supported Mr. Klein's proposal. In connection with Mr. Lallah's point, he said that question 10 would specify that the envisaged paragraphs of article 14 were paragraphs 1 and 3 (g).

74. Replying to a point raised by Mr. PRADO VALLEJO, Mr. BHAGWATI proposed that the first question in paragraph 8 should be amended to read: "Is adequate legal aid available to all accused at all stages?" That would make the question broader in scope.

75. Mr. Bhaqwati's proposal was approved.

76. The CHAIRPERSON announced that questions 7, 8 and 10, which all related to article 14 of the Covenant, would be regrouped and that that section, the last in part I of the list of issues, would be restructured so as to allow the delegation of Jamaica to reply in a more rigorous fashion to the questions asked by members of the Committee.

Question 9

77. Question 9 was adopted without amendment.

Questions 11 to 15

78. Questions 11 to 15 were adopted without amendment.

79. The list of issues (CCPR/C/61/Q/JAM/3) to be taken up in connection with the consideration of the second periodic report of Jamaica, as amended, was adopted.

80. The CHAIRPERSON invited the Committee to consider the list of issues (CCPR/C/61/Q/IRQ/3) to be taken up in connection with the consideration of the fourth periodic report of Iraq.

81. Lord COLVILLE (Chairman/Rapporteur of the Working Group) said that the Working Group had endeavoured to draft the list of issues to be taken up in connection with the consideration of the fourth periodic report of Iraq as precisely as possible, in order to encourage the State party to describe the real situation, without seeking to make excuses for the Government's shortcomings with regard to its obligations under the Covenant.

Questions 1 to 4

82. Questions 1 to 4 were adopted without amendment.

Question 5

83. Mr. KLEIN, referring to the penultimate question, which concerned torture and cruel, inhuman or degrading treatment, considered that reference should be made not only to article 7 of the Covenant, but also to article 18; it should also be asked whether medical personnel, who were apparently compelled to be present during the imposition of certain penalties, could exercise their right of conscientious objection.

84. Ms. EVATT, Ms. GAITAN DE POMBO and Lord COLVILLE agreed.

85. Mr. LALLAH proposed that a reference to article 5, paragraph 1, of the Covenant should be added.

86. Question 5, as amended by Mr. Klein and Mr. Lallah, was adopted.

Questions 6 to 10

87. Questions 6 to 10 were adopted without amendment.

Question 11

88. Mr. KLEIN proposed that question 11 should appear after question 3, since the execution of prisoners who had apparently been given only summary trials and deprived of all right of appeal was more relevant to article 6 of the Covenant, which concerned the right to life.

89. Mr. Klein's proposal was approved.

90. Question 11 was adopted.

Questions 12 to 17

91. Questions 12 to 17 were adopted without amendment.

92. The list of issues (CCPR/C/61/Q/IRQ/3) to be taken up in connection with the consideration of the fourth periodic report of Iraq, as amended, was adopted.

93. The CHAIRPERSON invited the Committee to consider the list of issues (CCPR/C/61/Q/SUD/2) to be taken up in connection with the consideration of the fourth periodic report of Sudan.

94. Lord COLVILLE (Chairman/Rapporteur of the Working Group) said that in preparing the list of issues to be taken up in connection with the consideration of the fourth periodic report of Sudan, the Working Group had attempted to select the most important points on which members of the Committee could question the delegation, not merely levelling criticism, but rather highlighting the positive aspects. It thereby hoped to encourage the delegation to describe the concrete measures taken by the Government to put an end to the many civil conflicts raging in Sudan, the cessation of which was naturally an essential condition for respect for the rights set forth in the Covenant.

95. The CHAIRPERSON announced that at its next meeting the Committee would continue the consideration and adoption of the list of issues concerning Sudan.

The meeting rose at 12.55 p.m.