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### HUMAN RIGHTS COMMITTEE

Sixty-fifth session

#### SUMMARY RECORD OF THE 1739th MEETING

Held at Headquarters, New York,  
on Tuesday, 30 March 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 10 a.m.

OTHER MATTERS

Statement by Ms. Connors (Division for the Advancement of Women)

1. Ms. CONNORS (Division for the Advancement of Women) said that the Committee had endeavoured to integrate gender concerns into its work as mandated by the Vienna Declaration and Programme of Action. The treaty bodies raised gender concerns routinely in their discussion, concluding observations and general comments and frequently designated one member to follow the work of the Committee on the Elimination of Discrimination against Women (CEDAW). The Division was ready to assist Ms. Evatt, who had been so designated, in that task and she was pleased to report that Ms. Schöpp-Schilling, a CEDAW member, had been chosen to follow the work of the Human Rights Committee.

2. Since 1997, CEDAW had been able to meet twice a year for three-week periods, preceded by a week-long pre-session working group. As a result, it had been able to make substantial inroads into the backlog of States parties' reports, introduce new procedures for the formulation of general recommendations and adopt a general recommendation on article 12 of the Convention (women and health). Non-governmental organizations had been invited to provide the Committee with country-specific information on States parties under review. It had been also decided to convene the pre-session working group, which drew up the lists of issues and questions relating to the periodic reports of States parties, at the end of the session preceding the consideration of those reports in order to give States parties more time to prepare written responses.

3. At its most recent session, the Commission on the Status of Women had approved a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women for adoption by the General Assembly at its fifty-fourth session. If adopted, the optional protocol would enter into force upon accession or ratification by 10 States parties to the Convention. The draft protocol would establish an individual communications procedure for the submission of communications by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in that Convention, and a procedure which would allow the Committee to initiate inquiries on the basis of reliable information indicating grave or systematic violations of those rights by a State party. Communications could be submitted only with the consent of the persons concerned, unless the author could justify acting on their behalf without their consent. Although no reservations to the protocol would be permissible, States could opt out of the inquiry procedure. Article 5 of the draft protocol provided for interim measures to avoid irreparable damage to victims; article 11 obliged States parties to take steps to ensure that individuals were not subjected to ill-treatment or intimidation as a consequence of communicating with CEDAW pursuant to the Protocol; and article 13 committed States parties to publicizing the Convention and the Protocol and to facilitating access to the views and recommendations of CEDAW.

4. The Division was ready to support the Committee in any way, including by providing gender-specific information on States parties to be used in the

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consideration of reports. It would welcome the Committee's input and, in particular, information on its experience with regard to the First Optional Protocol to the Covenant.

5. The CHAIRPERSON said that the Committee would welcome the adoption of the draft optional protocol, which would be a major step towards the achievement of a truly democratic international community.

GENERAL COMMENTS OF THE COMMITTEE (continued)

Draft general comment on article 3 of the Covenant (CCPR/C/65/R.10)

Paragraph 1

6. The CHAIRPERSON, speaking as Chairperson/Rapporteur of the Working Group on article 40 of the Covenant, said that she took it that the Committee was prepared to adopt paragraph 1 of the draft general comment as amended by Mr. Lallah.

Paragraph 2

7. The CHAIRPERSON said that paragraph 2 of the draft was intended to point out that article 3 reiterated that men and women had equal rights. Although the word "interdependent" was generally used to describe the relationship between civil and political rights and economic, social and cultural rights. In the current context, however, it was intended to stress that a violation of one right could prevent the enjoyment of other rights. That was particularly clear in the case of women under articles 9, 12 and 25 of the Covenant; for example, a woman who was denied the right to freedom of movement or opinion would find it difficult to exercise the right to vote.

8. Lord COLVILLE said that he supported the use of the word "interdependent". The difference between the Covenant and other human rights instruments, such as the European Convention of Human Rights, was that the Covenant included a comprehensive prohibition of discrimination of any kind. The Committee's general comment 18 on article 26 of the Covenant (non-discrimination) made a similar point. However, whereas that general comment emphasized that all discrimination was prohibited, regardless of whether it concerned rights guaranteed under the Covenant, the use of the word "interdependent" in the current context stressed the interrelatedness of the rights established by the Covenant.

9. The CHAIRPERSON said that several members had proposed amendments to paragraph 2. Mr. Buergenthal had suggested that the second sentence should begin with the words "Article 3 articulates two important ideas". Lord Colville had suggested the incorporation of the words "it is of the essence of the Covenant that human rights under it are interdependent". Mr. Lallah had proposed that the last sentence of the paragraph should be moved to the end of the general comment, where it could serve as a conclusion. Mr. Scheinin had suggested that the title of the draft should be amended to make it more comprehensive. Lastly, Mr. Pocar had proposed that the words "having the possibility of enjoying all other rights" should be replaced by "the enjoyment

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of all other rights"; however, Mr. Wieruszewski had been opposed to that amendment.

10. Mr. YALDEN recalled that he had also suggested an amendment to the paragraph. While he had no objection to Lord Colville's suggested wording, he did not agree that the full enjoyment of one right required having the possibility of enjoying all other rights.

11. Mr. BHAGWATI said that he agreed with Mr. Yalden while human rights were interdependent, certain rights could be enjoyed independently of others. Furthermore, he supported Mr. Lallah's proposal that the last sentence of the paragraph should serve as a conclusion to the draft comment.

12. The CHAIRPERSON said that she took it that the Committee wished to amend the second sentence of the paragraph to read "Article 3 articulates two very important ideas: first, that human rights under the Covenant are to be enjoyed by all people, men and women, on an equal basis; and secondly, that human rights are interdependent".

13. Ms. EVATT said that she agreed with Mr. Yalden. However, the long-standing subordination of women made it particularly important to stress the interdependence of all rights and the fact that a violation of even one right perpetuated traditional attitudes towards women.

14. Mr. BUERGENTHAL suggested that the word "people" in the second sentence should be replaced by "human beings". Furthermore, the word "interdependent", which had a different meaning in the field of human rights, was unclear to him as used by the Chairperson and Ms. Evatt. He would prefer for the Committee to find an alternate wording.

15. The CHAIRPERSON said that she would welcome any suggestions in that regard.

16. Mr. POCAR said that the statement in article 3 that States parties undertook to ensure the equal right of men and women to the enjoyment of all rights set forth in the Covenant was not, in fact, included in article 2. The Committee might consider whether the concept of interdependence should be linked to the idea that the enjoyment of that right was hindered by a failure to enjoy any other right guaranteed under the Covenant.

17. Ms. EVATT said that Mr. Pocar had found the solution which the Committee had been seeking.

18. Ms. CHANET said that she agreed.

19. The CHAIRPERSON said that the idea was an excellent one and asked Mr. Pocar and Mr. Buergenthal to find an appropriate wording.

#### Paragraph 3

20. Lord COLVILLE said that he supported the decision not to combine paragraphs 2 and 3, which dealt with different issues. Since paragraph 3 was intended to assist States parties in the reporting process, it should

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incorporate the idea that in some countries, discrimination against women existed on such a scale as to constitute a factor or difficulty in the enjoyment of human rights, a formula which the Committee had used in its concluding observations on the reports of States parties and which seemed particularly appropriate in the case of the initial report of Lesotho (CCPR/C/81/Add.14), which the Committee would consider at its current session.

21. Mr. AMOR suggested that the words "and action" should be added after "special measures" in the third sentence of paragraph 3 and that the words in brackets should be deleted.

22. Mr. ZAKHIA suggested that the principle of parity, which had been used to good effect by many European countries, should be incorporated into that sentence.

23. Mr. AMOR said that the word "parity" was controversial and suggested that "equal access" would serve the same purpose.

24. Ms. EVATT said that, in English, the term "special measures" implied affirmative action and was adequate to convey the concepts to which Mr. Amor had referred. However, she understood that some changes might be required in other languages.

25. Mr. YALDEN said that the words "affirmative action" should be deleted since the words would raise the vexing question of quotas for residents of the North American continent. The words "special measures" would suffice to convey the concept.

26. Ms. CHANET said that, from a methodological point of view, it might be easier for the Committee to deal with the substantive issues raised in the later paragraphs of the draft comment before determining the wording of the earlier paragraphs. Furthermore, she thought that the issues raised in paragraphs 3 and 4 of the draft could best be discussed in the context of paragraph 20, which dealt with article 26 of the Covenant, since all three paragraphs concerned discrimination against women and affirmative action.

27. Mr. BHAGWATI said that since the words "special measures" did not necessarily imply affirmative action, a comma and the words "including affirmative action" should be inserted after the words "special measures" in the third sentence of paragraph 3 and the words in brackets should be deleted. A similar point had been raised during the Committee's discussion of its draft comment on article 26, and it had been decided to retain the words "affirmative action".

28. Mr. POCAR said that Ms. Chanut's suggestion that the Committee should discuss the substantive issues of the draft general comment before turning to the introductory paragraphs merited further consideration.

29. Ms. EVATT said that it was important to state as clearly as possible that it was not enough for States to amend their legislation and to inform people of their rights; it might also be necessary to take action to remove obstacles to the enjoyment of human rights. The Committee had used the words "affirmative

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action" in paragraph 10 of its general comment on article 26, and should do so in the current draft as well.

30. The CHAIRPERSON said that she had included the words "affirmative action" in her initial version of the draft general comment and took it that the Committee wished to follow Mr. Bhagwati's suggestion in that regard. She had some reservations regarding Lord Colville's proposal to include the words "a factor or difficulty".

31. Mr. BHAGWATI said that he saw no need for such a reference since States parties would normally provide information on any factors or difficulties affecting the enjoyment of human rights in all areas, not merely with respect to the rights of women. Furthermore, he thought that the words "Hence, more information is required" could be deleted and the sentence reworded since the idea was that States parties must describe the situation of women in their countries with a view to ascertaining what measures should be taken.

32. Ms. EVATT said that she agreed with Lord Colville that one of the difficulties faced by States in meeting their obligations under the Covenant as a whole was the situation in terms of legislation, cultural attitudes, customs and practices. However, since the idea was to stress the obligations of States to do something about factors over which they did not have immediate control, she would prefer not to emphasize the point in paragraph 3.

33. The CHAIRPERSON said that she agreed. She had taken the last sentence from paragraph 2 of General Comment No. 4.

34. Mr. ANDO said that if paragraph 3 was considered in conjunction with paragraphs 4 and 5, that could take care of Lord Colville's concern.

35. Lord COLVILLE said that there should be some indication of the scale of the problem, since it varied so much between States parties. However, if that point was covered by paragraphs 4 and 5, he would not pursue it.

#### Paragraph 4

36. Mr. POCAR said that the phrase "most of the countries in the world" in the first sentence gave the impression that a number of countries were absolved.

37. Ms. GAITAN de POMBO said that it would be better to refer to discrimination against women, than to use the words "the disadvantaged position of women".

38. Ms. EVATT said that a link needed to be made between the first and second parts of the sentence. The first phrase could be changed to read: "Since widespread discrimination against women throughout the world is deeply embedded in the culture, it is often the case ...".

39. Mr. BHAGWATI said that in the second sentence, the words "these actions" should be changed to "such discriminatory actions".

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40. Mr. AMOR said that it should make clear that it was the responsibility of the State to ensure the enjoyment of rights, so that the State did not invoke other actors or cultural problems to avoid its responsibilities.

41. Mr. POCAR said that the point needed to be made that the State was responsible for dealing with all discrimination occurring in its territory. He suggested that the second sentence should start: "Ensuring the enjoyment of the rights under article 3 is the responsibility of the State" and then refer to the obligation of the State to take the necessary steps.

42. Mr. SCHEININ said that, in the last sentence, the word "prohibiting" should be changed to "aimed at eliminating" so as to cover more than just criminal sanctions.

43. Ms. EVATT said that the word "prohibition" was used in the Covenant.

44. Mr. YALDEN said that the words "legislation prohibiting discrimination" should be changed to "measures prohibiting and aimed at eliminating".

45. Mr. AMOR said that the last sentence should refer to measures and actions to combat and eliminate discrimination.

46. Lord COLVILLE said that he agreed that the last sentence should cover both criminal and civil proceedings. In addition, the Committee needed to know about available remedies.

47. Mr. ANDO said that a separate paragraph dealing with the question of remedies could be added.

48. Lord COLVILLE said that he could support the idea of a short, separate paragraph requiring States to give details of remedies for public and private acts of discrimination.

49. The CHAIRPERSON suggested that the first part of the last sentence should read: "States should report on measures prohibiting, combating and aimed at eliminating discrimination on the ground of sex ...".

#### Paragraph 5

50. Mr. BUERGENTHAL said that in the first sentence of paragraph 5, the word "affecting" should be changed to "impeding".

51. Ms. EVATT said that in the second sentence, the words "affecting the equal enjoyment of each right by women" should be added after the word "factors".

52. Ms. CHANET said that she would prefer to delete the last part of the second sentence, after the words "with regard to these various rights".

#### Paragraph 6

53. Ms. GAITAN de POMBO said that all conflicts were important, and proposed that the word "major" in the last line should be deleted.

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54. Mr. KREITZMER, referring to the use of the words "state of emergency", said that the situations referred to could arise in any case of conflict and as article 4 expressly referred to a state of emergency, the Committee might prefer to change the wording to "during states of conflict" and delete the reference to article 4.

55. Mr. SCHEININ said that he supported the suggestion to delete the reference to article 4. The positive obligations in relation to protecting women in times of different emergencies could then be referred to because they did not issue from article 4 but from the Covenant in general. Moreover, he proposed that the word "suspension" in the second line should be replaced by "derogation".

56. Mr. ANDO said that the Committee did not have to limit itself to a state of emergency under article 4. Paragraph 6 made a very relevant point that was emphasized by the Covenant itself and it should be stressed.

57. Mr. BUERGENTHAL said that he agreed with Mr. Ando. It was important to retain the concept of emergency and the reference to article 4, which was the basis for the paragraph. It might then be unnecessary to say "in case of major internal or external conflicts", although if this concept was retained, he would prefer the word "international" rather than external.

58. Ms. EVATT said that the Committee had heard of situations which might have fallen into the category of states of emergency but had not been dealt with as such by States as well as of situations of conflict when rights had been prejudiced. Consequently, it might wish to refer to a "state of emergency or other conflict" in the first sentence in order to retain the phrase "state of emergency" in the second.

59. Mr. AMOR suggested incorporating the previous suggestions so that the first sentence would read "The enjoyment of human rights by women should be protected under all circumstances and particularly in states of emergency and during conflicts".

60. The CHAIRPERSON said that in view of the various comments that external and internal conflicts are not necessarily declared as states of emergency, both concepts would be included.

61. Mr. POCAR said that there appeared to be two different issues and it might be preferable to separate them. The first was a state of emergency and the Committee had to deal with derogations and stress that any measures adopted should not be discriminatory; the second referred to situations of conflict, where the measures to protect women from rape, abduction and violence should be stressed.

62. The CHAIRPERSON said that if the Committee had no objection she would separate the two issues in paragraph 5.

63. It was so decided.

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Paragraph 7

64. Mr. ZAKHIA said that, in cases of adultery, women were often subject to more severe punishment than men and proposed that that should be reflected in the last line.

65. Mr. SCHEININ said that States parties should provide disaggregated data on birth as well as mortality rates and that a sentence on pre-natal sex selection and infanticide should be inserted after the second sentence.

66. Mr. SOLARI YRIGOYEN said that the word "unacceptable" should be inserted before the phrase "cultural practices" in the last sentence as the actual wording implied tolerance.

67. Lord COLVILLE said that the reference in the second sentence to "measures taken to prevent unwanted pregnancies" did not take into account such cases as pregnancy due to rape, or abortion when pregnancy was life-threatening.

68. Mr. WIERUSZEWSKI supported by Ms. EVATT, proposed that States should also be asked to report on the impact of poverty and deprivation on women.

69. Mr. AMOR suggested that the second sentence should refer to unacceptable practices and said that he agreed with Mr. Zakhia's proposal to amend the final line in order not to restrict the text to the death penalty.

70. Ms. GAITAN de POMBO said that the wording of the first sentence should be stronger and proposed that the phrase "it would be useful if States parties could provide" should be replaced by the words "the Committee needs".

71. The CHAIRPERSON said that the following amendments and insertions would be made to paragraph 7: "When reporting on the right to life of article 6, States parties should provide male and female disaggregated data on birth and mortality rates and on the incidence ...". "The Committee should also receive information on any measures taken by the States to help women prevent unwanted pregnancies ...". "States should report on the occurrence of pre-natal sex selection and infanticide and steps taken to outlaw and eradicate them. States should report on the particular impact of women of poverty and deprivation that may pose a threat to their lives. States should also report on measures to protect women from the impact of unacceptable practices such as the burning of widows and dowry killing." The remainder of the final phrase would be deleted. She said she took it that the Committee agreed to those changes.

72. It was so decided.

Paragraph 8

73. Lord COLVILLE proposed that in addition to reporting on national laws and practices with regard to domestic and other types of violence, rape and prostitution, States should include information on remedies. Moreover, although pregnancies resulting from rape were dealt with in paragraph 8, abortion to save the mother's life should be referred to paragraph 7.

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74. Mr. SCHEININ said that there was a rather inadequate reference to forced sterilization or abortion in paragraph 15. Those two issues should be brought into paragraph 8 because they related to article 7 of the Covenant.

75. The CHAIRPERSON said that she took it that the Committee agreed to those two suggestions.

76. It was so decided.

77. Mr. ANDO said that references to remedies could be added to the paragraphs, when necessary, and the Committee could then see if they should be incorporated into a separate paragraph.

78. Ms. EVATT, referring to the issue of remedies, said that the phrase "including measures of prevention and protection" could be included after the words "Information on national laws and practice", at the beginning of paragraph 8.

79. Ms. CHANET said that both paragraphs 7 and 8 referred to abortion and greater clarity on the issues involved was necessary.

80. The CHAIRPERSON said paragraph 8 referred only to the legal aspects of abortion. In some countries abortion was a criminal offence even when a pregnancy resulted from rape.

81. Mr. AMOR said that he did not consider that there was a link between article 7 and abortion. Moreover, he proposed that paragraph 8 should commence with the words "The Committee should receive information ...".

82. The CHAIRPERSON said that, if the Committee agreed, she would clarify the possible relation between abortion and article 7 and include references to forced abortion and sterilization, and measures of prevention and protection.

83. It was so decided.

#### Paragraph 9

84. Mr. SOLARI YRIGOYEN said that first sentence of paragraph 9 referred to disguised forms of slavery in certain types of domestic service. That concept should be broadened to include other categories of work for which women are hired.

85. Mr. AMOR said that domestic service was a very widespread disguised form of slavery in many countries and did not necessarily involve prostitution, while other categories of work could do so.

86. Lord COLVILLE said that the paragraph dealt with two separate ideas: first, the joint efforts between States and second, the specific situation in any State, which was an internal matter.

87. Mr. KREITZMER said that the Committee might prefer to say "including foreign women" rather than "particularly foreign women" and suggested that the

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beginning of the final sentence should read: "Information should be provided on joint efforts ...".

88. Mr. BHAGWATI proposed that in the first sentence, the word "avoid" should be replaced by the phrase "prevent or eliminate". The second sentence referred to joint efforts between States where women were recruited and States where violations occurred. He therefore, suggested that the sentence "States should provide information on measures taken to prevent these violations from occurring" should be added at the end of paragraph 9.

89. Mr. BUERGENTHAL proposed that the word "joint" in the fourth line should be replaced by the word "collaborative".

90. The CHAIRPERSON said that the idea was that the Committee would like to receive information on collaborative efforts between the States where the women were recruited and the States which received them. The phrase "certain types of domestic services" could be deleted.

91. Ms. EVATT suggested that the phrase "such as" could be inserted after the word "slavery" and that some examples should be provided.

92. Mr. SCHEININ said that the word "female" in the second line of the paragraph should be deleted.

93. Mr. YALDEN said that he agreed that the reference to domestic service should be retained but that the types of service meant should be clarified.

94. Mr. BUERGENTHAL said that the concerns expressed could be met with the following wording: "slavery disguised inter alia as domestic service".

95. Lord COLVILLE said that it was his understanding that the concept of trafficking involved international movements of persons, but the Committee would also be interested in movement within the same country, for example, children from rural areas being brought to cities and tourist destinations for prostitution. It would be helpful if the term "trafficking" could be qualified by the addition of the phrase "within a country or externally".

96. Mr. BHAGWATI said that he understood trafficking to mean any form of buying and selling of persons anywhere and did not find it necessary to qualify the concept. However, the phrase "within a country or across borders" could be added after the words "women and children". The second sentence could be amended to read "Information should be provided on collaborative efforts between States where women are forced into prostitution or slavery and States from which women are recruited or coerced into such situations."

97. Paragraph 9, as orally amended, was adopted.

#### Paragraph 10

98. Mr. POCAR said that the last two sentences of the paragraph, which related to the right to personal security, should be deleted.

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99. Mr. YALDEN said that the discussion of article 12 should be kept separate from the discussion of article 9. Perhaps the references to article 12 should be placed in a separate paragraph.

100. Mr. SCHEININ said that mention should be made of strict dress requirements for women, but he was not sure whether that related to article 9 or article 12. The following phrase should be inserted at the end of the penultimate sentence: "as well as strict dress requirements for women in public places". With regard to the right to security, it was important to emphasize the Committee's findings in the Delgado Paez case, which had included a positive obligation for States parties under article 9.

101. Ms. EVATT said that women's right to liberty and security of person overlapped between articles 7 and 12. In some cases, however, their freedom of movement was restricted to such a degree that it became an arbitrary deprivation of liberty under article 9. It might therefore be useful to provide some examples in the paragraph.

102. Mr. AMOR said that it should be clarified that either the mother or the father could give permission for a minor child to receive a passport.

103. The CHAIRPERSON said that she had intended in the draft to focus on adult children.

104. Ms. CHANET said that, to avoid misunderstanding, the word "adult" should be inserted before the word "daughters" in the second sentence, and the phrase "husband or father" should be replaced by the phrase "male member of the family".

105. Mr. AMOR said that it should also be stressed that a woman had the right to a passport without the consent of anyone, even a judge.

106. The CHAIRPERSON said that a statement could be added on a woman's right to have a passport on her own.

107. Mr. ANDO said that, in the draft general comment, the Committee was simply asking the State party for information and giving examples. Therefore, while what Mr. Amor had said was correct, the general comment was not the place to make that statement.

108. Mr. AMOR said that the issue of travel documents was very important and should be reflected. He suggested that the phrase "or a third party" could be inserted before the word "consent" in the second sentence.

109. Paragraph 10, as orally amended, was adopted.

The meeting rose at 1 p.m.