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Human Rights Committee
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Summary record of the 1901st meeting
Held at Headquarters, New York, on Tuesday, 20 March 2001, at 3 p.m.

Chairperson: Mr. Bhagwati

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01-29546 (E)

The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Venezuela (*continued*) (CCPR/C/VEN/98/3*)

1. *At the invitation of the Chairperson, the delegation of Venezuela took places at the Committee table.*

2. **The Chairperson** invited the delegation to continue answering the further questions posed by the Committee.

3. **Mr. Avendaño** (Venezuela), referring to the feasibility of putting theory into practice, pointed out that, although he understood the members' need for concrete facts, Venezuela would need time to adopt new legislation or amend current legislation since the new Constitution had only been in effect for one year and two months. With respect to the query regarding the gender-based difference in the legal age for matrimony, he indicated that the Venezuelan Civil Code governed family and matrimonial matters. The Venezuelan Constitution adhered to international guidelines, but the National Assembly would require time to amend legislation, including the Penal Code, to ensure equality. Similarly, legislation was currently being drafted concerning land reform for indigenous peoples.

4. Turning to comments regarding access to justice, the need for further information on the application of the Equal Opportunities for Women Act, and the concept of tacit pardon, he indicated that all Venezuelan citizens and foreigners had full, unfettered access to the courts. Childcare programmes and other services for women, as well as efforts to promote gender equality, were severely hampered by the fact that 80 per cent of the Venezuelan population lived in extreme poverty. In short, many women, particularly single mothers, continued to face serious inequities. Finally, concerning the concept of tacit pardon as it applied to homosexuality, he said that homosexuals were not subject to discrimination or restriction of their rights, but that such rights had not been enshrined in a specific piece of domestic legislation.

5. Concerning the percentage of women in senior decision-making positions within government, he stated that progress had been made in that area. For example, 50 per cent of Venezuela's 60 accredited ambassadors were women, and 50 per cent of senior positions in the Foreign Affairs Department were held by women, as were 75 per cent of all staff positions in this department — a case of reverse discrimination.

6. **Ms. López De Penso** (Venezuela) said that a great deal of existing legislation had to be brought into line with the principles contained in the new Constitution. For example, the Public Prosecutor's Department was proceeding with a draft reform of the Penal Code, which was outdated and no longer in tune with social realities. Similarly, although the property provisions of the Civil Code had been updated in 1982, much work remained to be done on the section concerning family rights. The case of the girl-child reportedly kidnapped by Colombian guerrillas was an isolated case, and both the Public Prosecutor's Department and the Ombudsman had assumed responsibility for her physical and moral well-being.

7. With regard to the education of undocumented children, on 20 September 1999 the Ministry of Education, Culture and Sports had adopted resolution 185 concerning the enrolment of such children, who did indeed attend school. Both the Ministry of Education and the executive branch had taken charge of the situation, as documented by recent reports in the national press and on television. Venezuela was experiencing a crisis concerning abortion, which was prohibited by the State and proscribed by the Catholic Church. Provision had been made for therapeutic abortions in cases of rape, and minors were represented by lawyers in such cases.

8. Although no statistics were available on the reported trafficking of women from Colombia to Venezuela, such cases were isolated in nature and subject to the provisions of international law, conventions and domestic legislation on national boundaries. Regarding violence against women and the family, she pointed out that in 1998 a Child, Youth and Family Protection Unit had been established within the Public Prosecutor's Department. Legislation provided for two options when settling cases of violence: mediation or resorting to the courts. The law was applied equally to men and women, and it should be pointed out that women were sometimes responsible for family violence.

9. Protection of the right of worship was enshrined in the new Constitution, although churches were obliged to register with the State and to describe their objectives. It was the responsibility of the Government to guard against the possible negative consequences of sects. The Violence against Women bill provided for both penal and civil sanctions for sexual harassment of women. Prevention programmes had been put in place, but few harassment complaints filed by women were in fact processed because they were often subsequently withdrawn.

10. **Mr. Saltrón** (Venezuela) referred Committee members to page 58 of Venezuela's written responses to the list of issues, which outlined various articles in the Constitution granting new rights and guarantees to indigenous peoples. Article 281 (1) of the Constitution provided for the establishment of a special ombudsman's office for indigenous peoples. He drew attention to a number of the main indigenous groups (Wayúu, Pemón, Yanomami) and said that they participated in the electoral process. There were three indigenous representatives in the National Assembly, all elected on the basis of local customs. The Ombudsman had brought an action for *amparo* on behalf of the Yanomami people, who had been denied their right to vote in an election. Finally, although no statistics were currently available on schools, particularly those providing bilingual education, that information would be forthcoming, along with all the other statistics requested by Committee members.

11. **Mr. Avendaño** (Venezuela) said that the meaning of "indigenous peoples" under the new Constitution was distinct from the concept outlined in international law. Enlarging upon previous comments on freedom of worship, he said that the State had signed a modus vivendi agreement with the Catholic Church in 1964, and a Directorate of Religions had been set up within the Ministry of Justice. Venezuela had a long-standing tradition of ensuring complete freedom of worship, and there was adequate room for both traditional churches and new religious movements. The concept of conscientious objection does not exist under Venezuelan law. In closing, he assured the Committee members that their comments would be communicated to the highest levels of the appropriate government agencies and departments in Venezuela.

12. **Ms. Medina Quiroga** said that she wished to put on record that some of her questions had not been answered, that others had received only general answers, and that she hoped to receive specific answers in writing at a later date.

13. **The Chairperson** underscored the long delay between Venezuela's reports. Although the new Venezuelan Constitution contained laudable provisions on human rights, good governance and social justice, such provisions would be worthwhile only if implemented. The Committee was interested in the concrete daily reality faced by citizens. Since Venezuela's written answers had not been translated into the official languages of the Committee, the reporting delegation's oral responses had taken on even greater importance. In view of the fact that the provisions of the Covenant apparently had priority over domestic law, Venezuela should provide a written response within one week citing cases where those provisions had been enforced in Venezuelan courts.

14. While the Committee welcomed the fact that Venezuela had adopted a considerable number of measures aimed at reducing gender-based discrimination, it still had a number of concerns, including the low representation of women in the National Assembly. He wondered whether the Government had any plans in that regard and also drew attention to discrimination in criminal law with regard to adultery, crimes of honour and prostitution. In the Committee's view, mechanisms must be put into place to curb violence against women. The Committee would also appreciate any explanation as to why marriageable ages of men and women were different.

15. Noting that health-care officials in Venezuela were bound by law to report abortions, he said that the Committee was greatly concerned, since that policy had led to high rates of maternal mortality, resulting from the reluctance of women to seek care following abortion-related complications. He was seriously concerned that certain provisions under the new Constitution making judges personally responsible for any errors in judgement might have crippling effects on the independence of the judiciary and that judges were prohibited from forming an association among themselves.

16. While he was glad to learn that the period of 8 days of detention before individuals were brought before a court had been reduced to 24 hours, he was concerned that there was no independent police authority where complaints of police abuse could be lodged. Moreover, the problems of prison violence and

deaths as well as extrajudicial executions should be addressed by Venezuela as soon as possible. On the other hand, it was heartening to note that the Supreme Court had struck down the Vagrancy Act and abolished the proceedings before military courts against persons who had been involved in the 1992 coup d'état. Referring to the liability of public officials for violations of the rights of citizens, he wondered whether that provision had been included in the new Constitution. He had been very happy to learn that the Ombudsman's office was investigating complaints of torture and violations of human rights and was taking action on those matters. Lastly, it was hoped that the Government of Venezuela would take into account the Committee's comments and concerns.

17. **Mr. Avendaño** (Venezuela) assured the Committee that once members were able to read the translation of the lengthy answers provided by the delegation, many of their doubts would be dispelled. Any points not covered in the report would be explained within a week, and the statistics requested would be sent to the Committee as soon as possible. Moreover, his Government had no interest whatsoever in concealing any particular situation which might be occurring in Venezuela.

18. *The meeting was suspended at 4 p.m. and resumed 4.20 p.m.*

General comments of the Committee

Draft general comment on article 4 of the Covenant (CCPR/C/71/Rev.7)

19. **Mr. Scheinin**, speaking as rapporteur on the draft general comment on article 4 of the Covenant, introduced the second reading of the draft, which had been prepared on the basis of the previous text. There had been a major change in approach. Instead of preparing an addendum to the General Comment No. 5 on article 4 concentrating on the issue of non-derogable rights, the Committee had deemed it more appropriate to replace it with a new one that would comprise all relevant legal issues under article 4. Broadly speaking, paragraphs 6 to 16 dealt with non-derogable rights. The remaining paragraphs covered other aspects under article 4. Amnesty International had sent a submission, and he would have no difficulty in incorporating some of the suggestions contained therein in the draft general comment, should the Committee agree.

20. Paragraph 1 of the draft dealt with derogation within the framework of the Covenant. Derogation was referred to as a unilateral measure by a State party but subject to many important safeguards provided by article 4 of the Covenant. The paragraph also noted that the draft general comment would replace General Comment No. 5.

21. **Mr. Lallah** said that the paragraph could be adopted.

22. **Sir Nigel Rodley** said that article 4 essentially had a permissive function, but with certain limitations, whereas the wording in paragraph 1 "to carry out their obligations under article 4" suggested that it was an obligatory article, rather than a permissive one. The main function of article 4 was to relieve States, to some extent, of certain obligations that they might have under the Covenant, but with limitations, which were themselves obligations. Hence, there was a need to marry the two concepts of freedom of action and obligatory limitations.

23. **Mr. Kretzmer** suggested that the idea could be expressed by using the wording "to assist States parties to meet the requirements of article 4".

24. **Sir Nigel Rodley** said that Mr. Kretzmer's suggestion was perfectly acceptable.

25. **Mr. Scheinin** endorsed Mr. Kretzmer's proposal.

26. **The Chairperson** said he took it that the Committee wished to approve paragraph 1 as amended.

27. *It was so decided*.

28. **Mr. Scheinin**, speaking as rapporteur for the draft general comment on article 4, said that paragraph 2 of the draft related to conditions for any derogation under article 4. It built upon the Committee's practice that there were two fundamental conditions, namely, that the situation must amount to a public emergency which threatened the life of the nation and that the State party must have officially proclaimed a state of emergency. The submission by Amnesty International would include a third condition, international notification of a state of emergency as a condition for invoking article 4. The rest of the paragraph related to the functions of the Committee in dealing with states of emergency. There was an addition at the end of the paragraph emphasizing the need for sufficient information in reports submitted under article 40 so that the Committee could perform its task.

29. **Mr. Kretzmer** suggested that the first sentence of paragraph 2 should commence with the words "Invoking the institution ...", instead of "A decision to invoke the institution ...", and that the second sentence should be reworded to read: "Before a State party could derogate from its obligations under article 4 of the Covenant, two fundamental conditions must be met".

30. **Ms. Chanet** endorsed Mr. Kretzmer's comments. Regarding the final sentence, she suggested that it should be reworded to read: "So that the Committee can perform its task, States parties to the Covenant should ...". While she understood what Amnesty International was suggesting in its letter, she was not sure whether that was in accordance with the Covenant. Article 4, paragraph (3), did not say that a state of emergency was subject to confirmation by the Secretary-General.

31. **Mr. Amor** suggested that the word "precise" should be added in the final sentence so that it would read "sufficient and precise information". In the paragraph under discussion, the French version of the text referred to an "état d'urgence", whereas the correct term was an "état d'exception" which had a broader meaning and encompassed the former expression.

32. **Mr. Lallah**, supported by Mr. Klein and Mr. Henkin, said that he endorsed Mr. Kretzmer's suggestion for the first sentence, but recommended replacing the word "institution" with the word "exercise". The phrase "regime of emergency powers" in the last sentence was too cryptic and should be replaced by the words: "particular legislation that gave effect to the emergency powers". Lastly, he questioned whether the Rapporteur had meant to indicate all the specific laws from which States may derogate.

33. **Mr. Yalden** suggested that the first sentence should begin with the phrase: "Any measures derogating from the provisions of the Covenant ..." and agreed with Ms. Chanet's suggestion regarding the wording of the final sentence. With regard to the fourth and fifth sentences, he suggested that they should be merged by placing a semicolon at the end of the former sentence and deleting the words "In relation to such domestic legal framework" from the latter.

34. **Mr. Shearer**, referring to the requirement to enact constitutional or other domestic provisions to govern the proclamation of a state of emergency, said that there was no provision in the Australian Constitution or laws in that regard. Moreover, to suggest that a State should enact such provisions with a view to some uncertain future seemed almost to invite it to happen. He questioned whether the phrase was necessary, because the reality was that, in emergencies, countries tended simply to suspend their Constitutions.

35. **Mr. Scheinin** said that he had taken note of the amendments proposed by Mr. Yalden, Mr. Kretzmer, Ms. Chanet, and Mr. Amor. With regard to Mr. Shearer's remarks, he believed that the current text was sufficiently flexible as it referred to "constitutional or other domestic provisions". The Committee needed to recommend that States should have some type of legislation to cover possible emergency situations, in order to ensure that they did not simply suspend their constitutions. Lastly, in the French text, he noted the preference to substitute "état d'exception" for "état d'urgence". However, the French wording of article 4 of the Covenant referred to "danger public exceptionnel", and as the English text used the language of the Covenant, the same should apply to the French and Spanish texts.

36. **Mr. Lallah** said that, while he appreciated Mr. Shearer's point, a number of States parties had constitutional provisions on states of emergency. He therefore shared Mr. Scheinin's view that the Committee might find some acceptable wording and awaited his suggestion in that regard. Some of the constitutions examined by the Committee included limitations that would be in accordance with article 4, paragraph (2).

37. **Ms. Medina Quiroga** suggested that the fourth sentence should read "To proclaim a state of emergency, it is necessary that there should be constitutional or other domestic provisions that govern such proclamation and the exercise of emergency powers". Since the original text of the draft general comments had been in English, the Committee should take a decision never to issue an important text, such as a general comment, without first having the French and Spanish translations reviewed by French-speaking and Spanish-speaking members of the Committee.

38. **Sir Nigel Rodley** said that he agreed with the changes that had been suggested. However, on the issue of prior provisions, he shared some of the substantive concerns expressed by Mr. Shearer, but for different reasons. Obviously, the Committee did not want to be seen to be legitimating extra-constitutional activities by those seeking power. Nevertheless, there

was a practical problem for some common law countries. The issue had arisen before the European Court of Human Rights in respect of derogations made by the United Kingdom, which had no constitution, with regard to Northern Ireland. In the case Brannigan and McBride vs. the United Kingdom, the argument had been made on behalf of the applicant, who had challenged a derogation, that there was no such provision in the United Kingdom law and no formal way of proclaiming a state of emergency.

39. In that case, the European Court of Human Rights had accepted that an announcement to Parliament by the Secretary of State constituted a sufficient proclamation for the purposes of the Convention. The language of article 4 tended to reflect civil law and constitutional systems rather than common law systems without a constitution. However, he did not wish to damage the necessary reinforcement of the positive civil law tradition and believed that the wording proposed by Ms. Medina Quiroga might be suitable to accommodate countries with a common law system.

40. **Mr. Ando** said that Japan also had very incomplete legislation on states of emergency. In order to be able to better monitor such situations, the Committee needed to lay down a requirement on domestic provisions, and Ms. Medina Quiroga's suggestion might be appropriate in that regard.

41. **The Chairperson** suggested that the fourth sentence of paragraph 2 should refer to article 4 and read "In order to comply with the requirements of article 4, the State party should enact constitutional ...".

42. **Ms. Chanet** said that the Covenant, which required an official act for the proclamation of a state of emergency, could not be subordinated to constitutional or legislative provisions. It was therefore necessary to delete the phrase in the fourth sentence "in order to comply with the requirement of official proclamation". Furthermore, if the Committee wished to exercise control before a state of emergency was proclaimed, it needed to have information on the relevant constitutional or legislative provisions.

43. **Mr. Rivas Posada** said that the Committee should first agree on the fundamental concept to be applied and then decide how to draft it. The basic idea was that states of emergency should be governed by constitutional provisions or the equivalent. The Committee was not trying to establish an obligation to enact legislation, which was what the wording of the fourth sentence ("should enact") indicated. The underlying concept was that, to establish a state of emergency, States parties must be authorized by the constitutional rules that govern that state of emergency.

44. **Mr. Klein** said that history had shown that, in order to safeguard the rule of law, States parties should have constitutional provisions regarding states of emergency. However, it went too far to say that otherwise they were not in compliance with the Covenant. The Committee should simply recommend that States parties adopt such provisions.

45. **Mr. Henkin**, observing that he had always been rather proud of the absence of such a clause in the United States Constitution, agreed that bringing in the issue of compliance was troublesome. The gist of the fourth sentence was simply that states of emergency should be governed by law.

46. **Ms. Medina Quiroga** said that the order of the second and third sentences might perhaps be switched in order to bring out the main point: the principle of legality and the need for some kind of governing legal norms.

47. **Mr. Amor** agreed that a wording satisfactory to all had to be found stating specifically that states of emergency needed a temporary legal order — constitutional or otherwise — to govern them.

48. **Mr. Shearer** pointed out that, if the Committee insisted on a constitutional provision, the common law countries would have to hold costly constitutional referendums or stop to enact an emergency powers bill. He proposed, to satisfy the common law countries, that in the fourth sentence, in addition to deleting the reference to compliance, the text should state that States parties should "act within" rather than "enact" the constitutional or other domestic provisions in the matter. States would then have to notify the Committee of the context in which they had acted, so that it could judge whether they had in fact acted in accordance with their powers.

49. **Mr. Lallah** observed that the Covenant required that proclamations should be done officially, in accordance with whatever legal provisions governed them; thus the Committee's text should not rule out any of the possibilities other than Constitutional arrangements. The sentence emphasizing legality and the rule of law was the heart of paragraph 2. He would go further along the lines suggested by Mr. Shearer,

and reinforce the last sentence by replacing the phrase "so that the Committee can perform its task" with the phrase ", enabling the Committee to perform its task in the implementation of article 4".

50. **Mr. Kretzmer** agreed that the main point of the general comment was to tell States parties what the Committee required in order to assess their compliance with the Covenant. He would therefore redraft the fourth, fifth and final sentences to read: "It is the task of the Committee to monitor the constitutional or other legal arrangements that govern proclamation of a state of emergency and the regime of emergency powers. States parties to the Covenant are therefore required to include in their reports submitted under article 40 sufficient information about their legal arrangements and practice so that the Committee can perform its task."

51. **Sir Nigel Rodley** said that, in the end, the Committee was concerned not with the institution of the state of emergency per se but with the measures taken by States parties in derogation of their obligations under the Covenant. He agreed that the central idea was that of legality throughout the process of proclamation, notification and derogation. He would add to the text that all measures taken by States parties had to be consistent with the rule of law and the constitutional and legal provisions of the country in question.

52. **Mr. Scheinin**, speaking as rapporteur, said that he could accept Mr. Kretzmer's suggestion concerning the Committee's task, together with Mr. Shearer's and Sir Nigel's suggestions. Accordingly, the fourth and fifth sentences could be redrafted to read: "When proclaiming a state of emergency with consequences that entail derogation from the provisions of the Covenant, States parties must act within their constitution or other provisions of law. It is the task of the Committee to monitor that the laws in question enable and secure compliance with article 4."

53. **The Chairperson** suggested that Mr. Scheinin should redraft paragraph 2 as a whole for consideration at the subsequent meeting.

54. *It was so decided*.

Paragraph 3

55. **Mr. Scheinin**, stressing the importance of paragraph 3, said that it introduced a new opinion as to what constituted, in the words of article 4, a public emergency which threatened the life of the nation. The Covenant did not refer to the classic situation of war or armed conflict because the drafters had not wanted to legitimize war; but the corollary was that article 4 did not distinguish between kinds of states of emergency. The notion of a state of emergency therefore needed to be narrowed. The heart of the paragraph was the close connection between armed conflict and the notion of a state of emergency under article 4. As a consequence, careful justification was needed for any other kind of situation that would lead States parties to invoke article 4.

56. **Mr. Kretzmer** observed that the first two sentences of paragraph 3 — dealing with the state of emergency as an exception — were not necessarily connected with the idea of when an emergency could be proclaimed. He agreed that war was the typical example, but one could not infer that any state of war or armed conflict justified the proclamation of a state of emergency, and that had to be stated specifically.

57. **Mr. Henkin**, concurring, said that other situations in which the life of the nation was at stake should be referred to. War was not the only example, and not all wars qualified as an example.

58. **Mr. Amor** pointed out that in paragraph 3, again, the French version of the text should keep to the language of the Covenant in rendering the terms "public emergency" or "state of emergency". He was troubled by the quasi-equation of war and public emergency. The possibilities varied greatly. Not all wars constituted states of emergency, not all states of emergency were linked to war, and not all public emergencies threatened the life of the nation. The emphasis should indeed be on the notion of a threat, and a much richer formulation was needed to cover all the kinds of situations involved.

59. **The Chairperson**, speaking in his personal capacity, said that the Venezuelan Constitution, for example, had illustrated the varieties of emergencies comprised in the concept.

60. **Sir Nigel Rodley** cautioned that, if it listed too many situations the Committee might seem to be inviting the proclamation of states of emergency, when it should be discouraging the practice. He therefore thought it appropriate to indicate the archetypal problem — war — that threatened the life of a nation, from which all other kinds of public emergency —

which the Committee might or might not want to list — should not depart too radically. Armed conflicts, bearing in mind Mr. Kretzmer's caveat, should be made the touchstone of what the Committee had in mind, without making them the exclusive consideration, as did the Geneva Conventions. Certainly, State practice in proclaiming states of emergency was not limited to situations of war. It might indeed be useful to add that the threat to the life of the nation was the criterion for legitimate proclamation and derogation. Regional case law indicated that even when situations did not involve an entire nation, they could constitute such a threat. Some exploration of such notions could set the context, while holding to the main idea.

The meeting rose at 6 p.m.