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HUMAN RIGHTS COMMITTEE

Sixty-fifth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1740th MEETING

Held at Headquarters, New York,
on Monday, 30 March 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.1740.

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The meeting was called to order at 5.25 p.m.

GENERAL COMMENTS OF THE COMMITTEE (continued)

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

Paragraph 11

1. Mr. ANDO, referring to the third sentence of the paragraph, questioned the differentiation in treatment based on social or economic status, which he believed was prohibited under the Covenant.
2. Mr. POCAR, supporting Mr. Ando, suggested deleting the phrase "such as considerations based on social or economic status". He proposed changing "should be applied" in the first sentence to "must be applied", which was more forceful.
3. The CHAIRPERSON agreed with Mr. Ando and Mr. Pocar.
4. Mr. BUERGENTHAL suggested that the first sentence should conclude, after "minimum rules", by the clause: "which States are required to comply with (article 10) must be applied without discrimination".
5. Mr. SOLARI YRIGOYEN said that "de todas las personas" should be changed to "a todas las personas" in the Spanish version.

Paragraph 12

6. Ms. CHANET suggested deleting the first sentence, since the equal enjoyment of rights by men and women should be implicit and need only be mentioned where there was a specific risk of violation.
7. Mr. KLEIN wondered whether article 7 of the Covenant was a more appropriate context for the second sentence, since article 13 dealt with procedural guarantees.
8. Ms. EVATT proposed that, in view of Mr. Klein's and Ms. Chanet's remarks, the second sentence should be expanded to read: "States should inform the Committee whether, in applying the procedural guarantees established in article 13, the risk of ...". Addressing Mr. Klein's doubts, she noted that the procedural guarantees mentioned in the paragraph provided the appropriate context for dealing with the substantive issues as well.
9. Mr. ZAKHIA proposed that the first sentence should conclude: "should take into account that the situation of women was more precarious". That would pave the way for the provision of additional guarantees, where necessary.
10. Lord COLVILLE, referring to the points covered in the second sentence of the paragraph, noted that article 13 dealt not only with procedural guarantees but also with decisions on the merits by a competent authority. Under that

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broader interpretation of article 13, paragraph 12 of the draft general comment could remain intact and there was no need to refer to article 7.

11. Mr. KLEIN said that the reasons against an individual's expulsion, which could be reviewed under article 13, must emanate from other articles of the Covenant, such as articles 6, 7 or 12 (1). Although he still believed that the issues raised were more closely related to article 7, he had no strong objection to the paragraph as it stood.

12. Mr. POCAR supported Mr. Klein, noting that, in its case law, the Committee had always dealt with the risk of torture under article 7 and that, in its general comment on aliens, it had indicated that article 13 covered procedural, rather than substantive, questions. In the absence of evidence that discrimination might occur in the application of procedural guarantees - and, to his recollection, none had ever been adduced - the second sentence should be redrafted and transferred to the paragraph on article 7.

13. Ms. CHANET, on the basis of Mr. Klein's and Mr. Pocar's comments, suggested deleting the paragraph and dealing with all the questions it raised in the paragraph of the General Comments on article 7. Citing the example of women's rights advocates who were victims of discrimination in their countries of origin, she noted that the risks of expulsion for women were far broader than merely sexual abuse and violence.

14. Mr. BUERGENTHAL suggested the following language with a view to maintaining the focus on procedural, rather than substantive, aspects:

"States should inform the Committee whether the procedural guarantees provided for by article 13 permit women to raise claims concerning the risk of being subjected to violations of rights, such as sexual abuse ...".

15. Ms. EVATT strongly supported Mr. Buergenthal's proposal. Its adoption, however, should not preclude an indication in the paragraph on article 7 that the risk of violations of women's rights should be considered in determining actions such as deportation.

16. Lord COLVILLE said that he would be agreeable to dealing with the questions raised in paragraph 12 of the draft general comment in its paragraph 8 in connection with article 7. He cautioned, however, that elements of paragraph 15 were already being moved to that paragraph, and that the concepts relating to the question of torture must not become confused in the process of rearrangement. He supported Ms. Evatt's remarks but specified that the most important concern was not whether procedural guarantees were available but whether national authorities took into account the risk of violations in determining a deportation, regardless of whether a claim was submitted. Therefore, if the content of paragraph 12 was transferred to paragraph 8, paragraph 8 should contain cross references to the duties and guarantees provided under article 13 insofar as they applied.

17. Mr. SCHEININ proposed adding forced marriage to the list of violations of rights enumerated in the sentence that was to be moved to paragraph 8.

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18. Mr. KLEIN questioned whether forced marriage truly came within the context of article 7.

19. Lord COLVILLE stressed that, in redrafting the paragraph, specific reference should be made to the substantive guarantees under article 13.

20. Mr. BHAGWATI wondered whether the second sentence of the paragraph could be replaced by Mr. Buergenthal's proposed wording.

21. Mr. ANDO also supported Mr. Buergenthal's proposal and proposed simply saying "guarantees" without specifying whether they were procedural or substantive. Since he believed that the question of forced marriage came within the context of article 8, he was reluctant to include it in the enumeration of risks.

22. Mr. BUERGENTHAL emphasized, that in moving elements of paragraph 12 to paragraph 8, it was important to mention procedural aspects, which could be adduced if a woman was denied a hearing on the grounds that her arguments were insufficient.

23. Ms. EVATT said that, like Mr. Buergenthal and other Committee members, she would prefer to retain the thrust of paragraph 12. It might indeed be best to refer to the guarantees under article 13 without qualification. Her main concern was that women should be permitted to raise gender-specific violations under any article of the Covenant.

24. Mr. ZAKHIA agreed that the term "guarantees" would be sufficient. He believed that forced marriage should be added to the list of violations, since it was characterized by violence and was a widespread threat to women.

25. The CHAIRPERSON, summing up, said that it was her understanding that the second sentence of paragraph 12 on the risk of violations should be moved to paragraph 8, which dealt with article 7; that Committee members preferred to retain paragraph 12, using Mr. Buergenthal's proposed formulation; and that specific mention should be made of women's right to raise gender-specific issues. She wondered whether Mr. Buergenthal wished to amend his formulation in the light of the discussion.

26. Mr. BUERGENTHAL suggested the following text:

"States should inform the Committee whether the guarantees provided for in article 13 permit women to raise the risk of gender-specific violations of their rights such as ...".

27. Lord COLVILLE suggested that it might not be necessary to specify forced marriage if the broader term "gender-specific violations" proposed by Ms. Evatt and Mr. Buergenthal was incorporated.

The second part (public) of the meeting rose at 6 p.m.