



**International Covenant on
Civil and Political Rights**

Distr.
GENERAL

CCPR/C/SR.1831
1 May 2001

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixty-eighth session

SUMMARY RECORD OF THE 1831st MEETING

Held at Headquarters, New York,
on Monday, 27 March 2000, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

1. Mr. BHAGWATI said that the working group assigned the task of preparing a draft note for the preparatory committee on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance would appreciate it if the members of the Committee would provide the following documentation to the secretariat by the afternoon of Tuesday, 28 March: extracts from General Comments relevant to the issue of racism; extracts from Concluding Observations and Views relevant to the issue of racism; and any other material bearing on the issue. The working group felt that there was not enough time to prepare a draft general comment, but he hoped that some material could be produced for the meeting of the preparatory committee to be held in early May 2000.
2. Following a discussion on the possible content of the Committee's contribution to the forthcoming meeting of the preparatory committee, the CHAIRPERSON said that she took it that the Committee wished the working group to prepare a provisional document.
3. It was so decided.
4. The CHAIRPERSON invited the Committee to fix the dates for the submission of future reports of the States parties whose reports had been considered at the current session. The Presiding Officers had considered the issue and it had been suggested that the Republic of the Congo should be invited to submit its next report in 2002 or 2003, that Mongolia should be asked to report in 2003, and that Guyana should be asked to report in 2002. She recalled that the report of the United Kingdom on the Crown Dependencies would be considered in conjunction with the report of the United Kingdom itself, which had already been submitted.
5. Mr. LALLAH said that, since the previous report of Guyana had been several years late, Guyana should be asked to produce its next report by 2001.
6. Mr. ZAKHIA said that, given the current situation in the Republic of the Congo, it would be more reasonable to request that State's report by 2003.
7. Mr. SCHEININ, supported by Mr. KRETZMER, agreed that 2003 was the better date for the Republic of the Congo, and suggested that Guyana should be asked to submit its report by 2002.
8. Mr. AMOR, supported by Ms. CHANET, said that the Congo, Guyana and Mongolia should receive equal treatment and that they should be asked to produce their reports by 2002.
9. Mr. WIERUSZEWSKI agreed that those three States should be given equal treatment, but said that it would be preferable to ask them to submit their reports by 2003 and to provide some information in the meantime.

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10. Mr. BHAGWATI, supported by Mr. YALDEN, agreed that the three States should be given equal treatment, and said that the year 2003 would be more realistic given the backlog of reports awaiting consideration by the Committee.

11. Ms. CHANET proposed that a decision should be postponed until a later meeting.

12. It was so decided.

GENERAL COMMENTS OF THE COMMITTEE (continued)

Draft general comment on article 3 of the Covenant (continued)

13. The CHAIRPERSON invited the Committee to resume its consideration of the draft general comment on article 3 of the Covenant. A new draft had been distributed, incorporating the changes introduced at previous meetings and a new paragraph 6 proposed by Mr. Scheinin.

Paragraphs 1 to 4

14. Paragraphs 1 to 4 were approved.

Paragraphs 5 to 8

15. Ms. CHANET, supported by Mr. ZAKHIA, proposed that the new paragraph 6 should be added to the beginning of paragraph 32, thus producing a strong statement covering all aspects of discrimination.

16. It was so decided.

17. Paragraphs 5, 7 and 8 were approved.

Paragraphs 9 to 11

18. Paragraphs 9 to 11 were approved.

Paragraph 12

19. Mr. HENKIN said that it was important not to confuse discrimination between men and women with human rights violations to which only women were subject.

20. Mr. AMOR requested confirmation that a reference to the practice of genital mutilation had been included in the concluding observations on the 1995 report of Yemen, as stated in note 7.

21. Ms. EVATT said that the delegation of Yemen had stated that the practice existed, but only in one small region of the country; however, it had indeed been mentioned in the concluding observations.

22. The CHAIRPERSON said that in any case, it was her understanding that the Committee had decided to eliminate all footnotes from the draft.

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23. Mr. KLEIN explained that it had been decided to delete all notes which referred to the Committee's concluding observations but to retain those which referred to communications or general comments; in fact, the document would benefit from additional references to the latter.

24. The CHAIRPERSON said she took it that the Committee wished to approve paragraph 12 on that understanding.

25. It was so decided.

Paragraph 13

26. Lord COLVILLE said that since the issue of abortion of female fetuses had been raised elsewhere in the document, paragraph 13 could be deleted.

27. Paragraph 13 was deleted.

Paragraphs 14 to 25

28. Paragraphs 14 to 25 were approved.

Paragraph 26

29. Mr. AMOR said that the last sentence of the paragraph should be amended to make it clear that polygamy was unacceptable under any conditions, not merely because it was available only to men. He therefore proposed that the last sentence should be replaced by a statement that the principle on which polygamy was based was itself unacceptable from the point of view of human rights and that, in any case, it constituted discrimination against women.

30. Mr. ZAKHIA suggested that Mr. Amor's proposal should be further amended to state that polygamy constituted an attack on women's dignity as human beings.

31. Mr. LALLAH noted that the Committee had, in fact, discussed the possibility that States might legalize polyandry rather than prohibit polygamy. He therefore supported the proposals made by Mr. Amor and Mr. Zakhia.

32. Mr. AMOR said that the Comment might read: "Polygamy constitutes an attack on women's dignity. It is discriminatory against them. It should be abolished".

33. Ms. EVATT said that at least in English, the word "discrimination" could be used quite broadly. She therefore suggested that a clear statement that polygamy constituted discrimination against women should be incorporated into the amendment proposed by Mr. Amor.

34. The CHAIRPERSON said she took it that the Committee wished to proceed along those lines.

35. It was so decided.

Paragraph 27

36. Ms. CHANET proposed that the words "where necessary" should be added after "legislation" in the second sentence.

37. Mr. ANDO said that the last sentence was problematic since under certain legal systems, someone must be designated as head of the family. He therefore suggested that the sentence should be amended to state that that role should not always be assigned to men.

38. Ms. EVATT said that she was uncomfortable with the concept of "head of the family". However, if the Committee did not wish to object to that role, the sentence could be amended to state that both husband and wife should have an equal right to be considered head of the family.

39. Ms. CHANET said that she agreed with Ms. Evatt. The last sentence could be deleted or, alternatively, amended to state that laws might not assign only to husbands the role of head of the family.

40. Mr. ZAKHIA said that under many States parties' legislation, the role of head of the family was deemed to be shared equally between husband and wife.

41. Mr. AMOR suggested that it would be better to make a positive rather than a negative statement; States parties must recognize that authority in the family could not be assigned solely to the husband or the wife and that equality in marriage implied a sharing of responsibility and authority within the family.

42. Ms. CHANET said that she supported Mr. Amor's preference for a positive statement but that it might be best to reproduce the wording of article 23 (4) of the Covenant: "States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage".

43. The CHAIRPERSON said that she preferred Mr. Amor's proposal because it stated clearly that authority in the family should be shared between husband and wife. If there was no objection, she would take it that the Committee wished to amend the second and last sentences of paragraph 27 as proposed by Ms. Chanet and Mr. Amor, respectively.

44. It was so decided.

Paragraph 28

45. Mr. AMOR pointed out that in some countries, particularly those under Muslim law, men could inherit from their non-Muslim wives but wives could not inherit from their non-Muslim husbands.

46. Ms. CHANET said that that problem was dealt with in the last sentence of paragraph 28; to further clarify, a comma and the words "without discrimination," could be added to that sentence after "men".

47. Mr. LALLAH suggested that the issue raised by Mr. Amor regarding inheritance rights under Muslim law could be addressed by inserting the words ", whether the spouses belong to the same religion or not," after "of men" in the last sentence.

48. Mr. ZAKHIA said that it might be better to leave the sentence unchanged as the matter had been dealt with in paragraph 6.

49. Mr. HENKIN requested an explanation of the term "repudiation" in the first sentence.

50. Mr. ZAKHIA said that repudiation was a term used to define a man's unilateral, arbitrary rejection of his wife without recourse to the courts.

51. Ms. EVATT and Mr. LALLAH suggested spelling out that only the male spouse could repudiate the female.

52. The CHAIRPERSON said that it was important not to suggest that States parties could resolve the problem by allowing wives to repudiate their husbands.

53. Mr. AMOR proposed that in order to avoid a possible misunderstanding, the Committee should state that marriage could be terminated only by death or by a divorce pronounced by the courts.

54. Ms. CHANET pointed out that in some countries, marriage could be terminated by contractual agreement through an authority other than the courts.

55. The CHAIRPERSON said that it might be best to leave the sentence unchanged. In the absence of any objection, she took it that the Committee wished to approve paragraph 28 without amendment.

56. It was so decided.

Paragraph 29

57. Paragraph 29 was approved.

Paragraph 30

58. Ms. CHANET said that note 34 was unclear. The term lobola appeared in the note but not in the text and that, with the exception of ngosi, none of the practices mentioned involved giving children away "to third parties" (à des tierces personnes).

59. Mr. YALDEN suggested that the references to specific practices should be deleted from the body of the document, the footnote removed and the words "to third parties" added to the English text. It might also be better to delete the reference to genital mutilation, which was dealt with in paragraph 12.

60. Ms. EVATT said that she would prefer to retain the reference to genital mutilation since paragraph 12 did not deal with violations of the rights of

young girls. However, she would leave the matter to the Chairperson's discretion.

61. Mr. BHAGWATI objected that the Committee could not inform States that children could not be given to third parties since that wording could be interpreted to include adoption.

62. The CHAIRPERSON suggested that the terms devdasi and kuzvarita would suffice to convey the Committee's meaning.

63. Mr. ZAKHIA proposed that the reference to specific practices should be removed from the body of the document and the footnote deleted in order to make it clear that all such practices, not only those mentioned, must be prohibited.

64. Ms. CHANET suggested that the portion of the sentence following "away" should be replaced by "to third parties as objects of exchange or for financial gain".

65. Mr. BHAGWATI suggested the wording "by giving them away for improper or immoral purposes".

66. Mr. LALLAH said that the issue went far beyond devdasi and kuzvarita. There were also undesirable forms of adoption for illicit purposes, and he therefore suggested ending the sentence with the words "female children", without giving any examples.

67. It was so decided.

Paragraph 31

68. Mr. YALDEN said that when discussing paragraph 3, he and Mr. Henkin had suggested that the phrase "affirmative action" had a rather special meaning in American English, and that it would be better to delete the phrase "including, where appropriate, affirmative action".

69. Mr. LALLAH said that they would lose a significant element if they ended the sentence at "public office". He suggested adding the words "and take positive and special measures".

70. The CHAIRPERSON suggested the phrase "special action" or "special measures".

71. Mr. AMOR noted that positive measures were by definition special measures. They referred not merely to formal affirmation, but were positive discriminatory measures that would have a real effect, and it was therefore not necessary to refer to their "special" nature. The term "positive measures" or "positive discrimination" had a clear meaning in many countries.

72. The CHAIRPERSON reminded the Committee of the current discussion on whether positive measures were discriminatory in the sense that they dealt with men and women differently.

73. Mr. BHAGWATI said that if they dropped the end of the sentence, the term "positive measures" alone did not convey the idea of affirmative action and the words "including, where appropriate, special measures" would be more appropriate. Most developing countries were now familiar with the concept of affirmative action aiming to improve the situation of women and raise them to a position of equality with men.

74. Mr. SCHEININ shared Mr. Bhagwati's view that a mere reference to "positive measures" was too vague, and suggested the wording "including, where appropriate, preferential treatment", as that could include quotas and also softer measures.

75. Ms. EVATT supported the text as it stood. She drew attention to the General Comment on discrimination (No. 18, para. 10), where a specific reference had been made to affirmative action to diminish or eliminate conditions which caused or helped to perpetuate discrimination, and then discussed specific action, which might include preferential treatment for a period. The same wording could be used in paragraph 31.

76. Mr. LALLAH also supported that idea because people reading the new general comment might wonder why the Human Rights Committee had watered down that particular provision. He suggested leaving the text as it was, with a slight amendment to read "to promote and ensure" before "participation".

77. Mr. KLEIN supported that amendment.

78. Mr. HENKIN said that preferential treatment sounded discriminatory, and was even contrary to the provisions in Conventions such as CEDAW, where such special treatment was always qualified by the words "temporary" and "where necessary". He favoured the wording "special positive measures".

79. Ms. CHANET shared the concern that the Committee would seem to have watered down the reference to discrimination, compared to the reference in the other general comment.

80. Mr. ZAKHIA shared the concern of the previous speaker, but believed that the term "preferential" had a rather subjective connotation, and suggested making a reference to "parity measures".

81. Mr. BHAGWATI agreed that they should not seem to be watering down what they had stated earlier and should therefore use the same language as before.

82. The CHAIRPERSON had thought that the words "where appropriate" would meet Mr. Yalden's concern, as they implied that such measures would be taken only when necessary.

83. Mr. YALDEN said that he would prefer the wording "including appropriate affirmative action".

84. The CHAIRPERSON said she took it that the Committee accepted the paragraph with two amendments "to propose and ensure" and "including appropriate affirmative action".

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85. It was so decided.

Paragraph 32

86. The CHAIRPERSON noted that paragraph 6 would be inserted before paragraph 32, as previously agreed.

87. Mr. ZAKHIA, referring to the third sentence of paragraph 32, proposed adding a reference to the concept of crimes of honour, which was a form of discrimination that existed in a number of countries.

88. Ms. EVATT believed that the issue raised by Mr. Zakhia related to equal protection of the law rather than discrimination. It did not seem to have been covered elsewhere, and perhaps paragraph 32 would be the right place.

89. The CHAIRPERSON noted that the issue of crimes of honour could either be dealt with in paragraph 5, or an additional sentence could be added to paragraph 32.

90. Mr. AMOR, replying to a point raised by Mr. Lallah, said that in his country the rights of foreigners referred to both resident and non-resident foreigners. If one referred only to residents, it might no longer be understood as referring to discrimination against non-resident foreigners.

91. Mr. SCHEININ suggested amending the sentence to read "right to citizenship" or "rights of non-citizens". Such wording would be sufficiently broad to cover all aspects of the situation.

92. The CHAIRPERSON said she would verify whether the reference was to non-citizens, residents or foreigners, and would amend paragraph 32 accordingly.

93. Ms. EVATT said that the issue of crimes of honour could be appropriately dealt with in paragraph 32. She proposed to insert the sentence "Women are denied the equal protection of the law by provisions which allow the defence of 'crime of honour' to be raised in the case of the murder of a woman" before the reference to penalties for adultery.

94. Mr. AMOR said that there were two issues involved, the commission of such a crime, and the impunity resulting from it, and both should be condemned. He proposed the sentence "The commission of crimes against women that were justified by honour and remained unpunished constituted grave violations of the Covenant, in particular articles 3, 6 and 14".

95. Mr. ZAKHIA supported Mr. Amor's suggestion.

96. Mr. SOLARI YRIGOYEN also supported Mr. Amor's suggestion, but would amend the proposed sentence to read "crimes against women that claimed to be justified by honour".

97. The CHAIRPERSON noted that in certain countries the State did accept such a justification for crimes. The words "crimes of honour" could be used with

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quotation marks. She assumed that the Committee agreed with Mr. Amor's suggestion.

98. Ms. CHANET said that the Committee should exercise caution with regard to the reference to the rights of residents: if paragraph 32 was to refer to non-citizens, that was fine, but if it was to refer to non-residents, then the words "and foreigners" should be added, to ensure that the latter were not excluded from the benefits of non-discrimination legislation.

99. Paragraph 32, as amended, was approved.

Paragraph 33

100. Lord COLVILLE noted that line 3 of the English text should read "any Covenant rights".

101. Paragraph 33 was approved.

Paragraph 16

102. Mr. HENKIN said that paragraph 16 began with a reference to article 9, which he understood as dealing with freedom from incarceration rather than a more general liberty, as there was no such general right described in the Covenant. Reference could have been made to article 12 or 17, or perhaps all three, but he was not sure that the jurisprudence of the Committee had accepted that liberty meant freedom.

103. The CHAIRPERSON said that they were not referring to liberty in general, but to the deprivation of personal freedom to move around, which was relevant to articles 9 and 12. If women were confined within the home and could not leave without permission of their husband or father, it was a deprivation of personal freedom, rather than liberty in general.

104. Mr. HENKIN said that all of article 9 seemed to deal with criminal enforcement, whereas articles 12 and 17 seemed more relevant to paragraph 16. He wondered if there were any other examples in addition to confinement within the house.

105. The CHAIRPERSON suggested that confinement in a hospital without due process was also an article 9 issue.

106. Mr. SCHEININ said that confinement, when it involved any action by public authorities, would be an article 9 issue. If it was a private action undertaken by the family, he would relate it to article 12. He proposed deleting the reference to article 9, and adding the sentence to the end of the previous paragraph, which already referred to articles 9 and 12. Also, perhaps the word "confinement" could be clarified.

107. The CHAIRPERSON said that the issue was that the State condoned such deprivation of liberty by denying women the right to leave the house without their husband's or father's consent. The Committee was concerned with the State's action or non-action, rather than with who was carrying out the

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deprivation of liberty. There had formerly been a footnote to the paragraph with a reference to Concluding Observations where that point had been made.

108. Ms. EVATT suggested leaving the paragraph as it was, unless they could find another word to use instead of "confinement".

109. Lord COLVILLE suggested that Mr. Henkin look at paragraph 1 of General Comment 8, and perhaps a footnote referring to that general comment could be included.

110. Ms. CHANET said that it was sometimes difficult to make the distinction between articles 9 and 12. Persons arrested by the police were not free to exercise their rights under article 12. Article 9 was not concerned with the nature of the person carrying out the detention. Many States had legislation that provided for the detention of persons in psychiatric hospitals or in private psychiatric clinics, which was supervised by the courts and was covered by article 9. The distinction could be made in terms of the type of detention. Article 12 was relevant to cases where women could not leave the home without the permission of the husband, and article 9 related to harem-type situations which amounted to arbitrary detention of the women concerned. The term "confinement within the house" did not cover such cases, and another term should be found.

111. Mr. AMOR said that Ms. Chanet had suggested the word "enfermement" (imprisonment), which he felt was a more accurate reflection of the situation described than "réclusion" (confinement).

112. The CHAIRPERSON requested the members of the Committee to suggest an English translation for "enfermement".

113. Ms. EVATT suggested the word "detention".

114. Mr. ZAKHIA said that he had doubts about the word "enfermement" because it also had the connotation of voluntary seclusion. If the law allowed a husband to lock his wife in the house, then perhaps the word "séquestration" (illegal detention) would be more appropriate.

115. The CHAIRPERSON suggested the phrase "being unable to leave the house on their own".

116. Lord COLVILLE suggested "deprivation of liberty".

117. The CHAIRPERSON recalled that her original draft had read: "The prohibition of arbitrary or illegal deprivation of liberty under article 9 and the right of freedom of movement in article 12 require the Committee to examine whether the laws and practice of States protect these rights on an equal basis with respect to women". That formulation was now reflected in paragraph 16.

118. Mr. SCHEININ said that the Chairperson's original proposal had been very good. He proposed that the word "confinement" should be retained, but that the words "any measures" should be changed to "their laws or practices".

119. Mr. KRETZMER suggested that the phrase "such as confinement within the house" should be replaced by "such as constraining them from leaving the home". He did not support Mr. Scheinin's proposal, because it was necessary to remind States that they must act to ensure that women were entitled to leave the home.

120. Mr. YALDEN said that "confinement" was a perfectly acceptable translation of "enfermement".

121. The CHAIRPERSON asked whether the members of the Committee would be satisfied with the following formulation: "With regard to article 9 States parties should provide information on their laws or practices which may deprive women of their liberty on an arbitrary or unequal basis, such as confinement within the house". In the French version, the word "confinement" would be translated as "enfermement".

122. Ms. CHANET said that the French text must be changed, as it contained the word "foyer", which meant "home" rather than "house".

123. Paragraph 16, as amended, was approved.

124. The CHAIRPERSON asked whether the members of the Committee could accept "Equal rights of men and women" as the title of the general comment.

125. Summarizing the agreed changes, she said that paragraph 6 would become the paragraph preceding existing paragraph 32, paragraph 13 would be deleted and paragraph 16 would be amended as proposed at the current meeting. The following would be inserted at the end of paragraph 26: "Polygamy is prejudicial to the dignity of women. It constitutes further inadmissible discrimination against women and an affront to their dignity. Accordingly, where it exists, it must be abolished once and for all". The last sentence of paragraph 27 would be amended as follows: "Equality during marriage implies that husbands and wives should equally participate in responsibility and authority within the family".

126. Ms. EVATT said that in the same paragraph, the words "where necessary" should be added at the end of the sentence beginning "States should review their legislation to ensure ...".

127. The CHAIRPERSON, resuming her summary, said that in paragraph 30, the last sentence should end with the words "the freedom and well-being of female children". In the second sentence of paragraph 31, the words "and ensure" should be inserted after "positive measures to promote", and the word "where" before "appropriate affirmative action" should be deleted. In paragraph 32, at the end of the first sentence, after the words "violates article 26", the following should be added: "The commission of crimes justified on the ground of honour and thus unpunishable constitutes a serious violation of the Covenant, particularly articles 6 and 14 thereof".

128. Ms. EVATT said that the sentence should read "... articles 6, 14 and 26".

129. The CHAIRPERSON said she agreed with that suggestion.

130. Mr. SOLARI YRIGOYEN said that in Spanish the phrase "crimes justified" would imply that the Committee considered the crimes to be justified, unless the word "justified" was placed in inverted commas.

131. The CHAIRPERSON suggested that the phrase should read "... whose justification is permitted on the ground of honour".

132. Mr. SOLARI YRIGOYEN proposed to amend that suggestion to "... whose justification is attempted on the ground of honour".

133. The CHAIRPERSON said that the problem was that there were States which permitted murder on the ground of the defence of honour. She reminded Mr. Solari Yrigoyen that the sentence went on to read "and thus unpunishable" and to refer to a serious violation of the Covenant.

134. Mr. ZAKHIA proposed that to get around the problem raised by Mr. Solari Yrigoyen, the formulation "(falsely) termed crimes of honour" should be used.

135. Mr. AMOR said that the sentence as drafted meant what it was intended to mean and did not imply any support on the Committee's part for such abominable crimes. For that reason, he did not support Mr. Zakhia's proposal, although if necessary, the phrase "so-called crimes of honour" would be acceptable.

136. The CHAIRPERSON asked whether the members of the Committee were prepared to accept Mr. Amor's proposal.

137. Lord COLVILLE said that if the phrase "crimes of honour" was placed in inverted commas, the problem would be solved.

138. Mr. AMOR said that "crimes of honour" in inverted commas would be meaningless to most people around the world. He felt strongly that the Committee should retain the concept of crimes justified on the ground of honour.

139. The CHAIRPERSON suggested that the phrase "crimes justified on the ground of honour" should be placed in inverted commas.

140. Mr. AMOR said that only "honour" should be in inverted commas.

141. It was so decided.

142. Mr. KRETZMER said that the title of the general comment should be "The equal rights of men and women" so as to bring it into line with the wording of article 3 of the Covenant.

143. Ms. CHANET said that whatever the formulation in English, the French text should read "égalité des droits", not "droits égaux".

144. The CHAIRPERSON said that "equality of rights between men and women" sounded better in English as well.

145. Mr. LALLAH said that there was nothing wrong with "equality of rights between women and men".

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146. The CHAIRPERSON said she took it that the Committee wished to adopt the title proposed by Mr. Lallah.

147. It was so decided.

148. The CHAIRPERSON said that the Committee had decided to delete all the footnotes relating to concluding observations and to retain those relating to communications. She took it that the Committee also wished to retain the footnotes relating to its general comments.

149. Mr. LALLAH said that it was necessary to check whether the footnotes referred to the original or to the revised general comment.

150. Mr. KLEIN said that the only reference to a general comment was in footnote 32; other references should be added.

151. Ms. EVATT noted that paragraph 25 referred to General Comment 19. In line with what Mr. Klein had said, she proposed that a reference should be added to the Committee's most recent general comment, on article 12.

152. Lord COLVILLE suggested that a reference to General Comment 8, which dealt with deprivation of liberty in a large number of circumstances, should be added in paragraph 16.

153. The CHAIRPERSON said she took it that the Committee wished to adopt the draft as orally amended, subject to further checking of the French and Spanish versions.

154. It was so decided.

The meeting rose at 5.50 p.m.