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HUMAN RIGHTS COMMITTEE

Fifth session

SUMMARY RECORD OF THE 118th MEETING

held at the Palais des Nations, Geneva,  
on Tuesday, 31 October 1978, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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session will be consolidated in a single corrigendum to be issued shortly after  
the end of the session.

The meeting was called to order at 11.10 a.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

1. The CHAIRMAN suggested that the Committee should defer until its next session a decision on whether to send new reminders to States parties which had not yet submitted their initial reports and that in the meantime, he and other members of the Committee would hold informal consultations with the heads of the Permanent Missions of the countries concerned in order to ascertain their intentions in the matter.

2. It was so decided.

3. The CHAIRMAN suggested that the Committee should send a reminder to those States parties which had indicated that they would provide additional information, requesting them to do so by the end of March 1979.

4. It was so decided.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (continued)

Ecuador (CCPR/C/1/Add.29)

5. At the invitation of the Chairman, Mr. Valdez (Ecuador) took a place at the Committee table.

6. Sir Vincent EVANS said that the representative of Ecuador, in introducing his country's initial report (CCPR/C/1/Add.8), had described the steps being taken by the Government in preparation for a return to constitutional normality. He understood that the Ecuadorian people had adopted a new Constitution in January 1978 and that presidential and parliamentary elections had been held in July 1978 but had been inconclusive. It would be interesting to receive information on progress being made in the return to a normal constitutional régime.

7. In reply to questions put to him at the Committee's second session, the representative of Ecuador had said that there were no political prisoners in Ecuador. He understood that since 1977 a number of politicians and trade union leaders had been arrested, and would welcome further information on that point.

8. Mr. GRAEFRATH said that he, too, would welcome information on progress being made in the return to a normal constitutional régime.

9. Referring to paragraph 34 of the additional information supplied by Ecuador (CCPR/C/1/Add.29), he asked what proportion of the population refrained from voting on grounds of illiteracy. The question was relevant to the implementation of article 25 of the Covenant because it appeared from article 33 of the new Constitution that there were two categories of elector. It would be interesting to know how the provisions of the first sentence of article 33 of the Constitution affected the access of Ecuadorian citizens to public service in their country.

10. Mr. ESPERSEN, referring to paragraph 6 of the additional information submitted by the Government of Ecuador, asked whether the far-reaching guarantee set forth in article 44 of the new Constitution could be invoked before the Tribunal of Constitutional Guarantees. It would also be useful to know the exact status of the new Constitution, which was sometimes referred to as the "Political Constitution" and sometimes as the "Political Charter".

11. Mr. LALLAH requested that copies of the new Constitution be made available to members of the Committee. He asked whether it had already entered into force.

12. It would be interesting to know whether the Government had ever been faced with a public emergency which had led it to invoke the provisions of article 4 of the International Covenant on Civil and Political Rights and whether, if the state of emergency no longer existed, relics of it still remained in the form of detention of persons and derogations from rights.

13. Mr. HANGA asked what steps the Government took to assist the establishment of family estates, as referred to in paragraph 32 of the additional information. It would also be interesting to know what criteria governed the redistribution of land under the agrarian law.

14. Mr. MOVCHAN recalled the statement made to the Committee at its second session by the representative of Ecuador, in which he had said that the application of the provisions of the Covenant was guaranteed by their incorporation into domestic law, since the Ecuadorian legal system recognized first the supremacy of the Constitution, then the legislation deriving from treaties and other international instruments ratified by the Government and, lastly, the domestic laws. But the question of the implementation of international instruments assumed special meaning if great importance was attached to the Constitution. He therefore wished to know how the Constitution operated, especially in relation to the implementation of the Covenant. Article 44 of the new Constitution guaranteed the implementation of international instruments, but it appeared that obstacles to such implementation remained in domestic law and that international instruments were indirectly deprived of their effect. Was it correct to state that, while article 44 of the new Constitution guaranteed enjoyment of the rights set forth in international instruments, the practical exercise of those rights still required both the operation of the Constitution and the promulgation of laws?

15. He was interested in the references in paragraphs 42 and 43 of the additional information supplied by Ecuador to plans for economic, social and cultural development, but noted that they were limited to the Integral Plan for Transformation and Development, 1973-1977. He wished to know what specific action - as opposed to the adoption of legal provisions - was being taken to secure the practical enjoyment of economic, social and cultural rights, for example in the sphere of the elimination of illiteracy.

16. Mr. GRAEFRATH said that, although the guarantee established in article 44 of the new Constitution had been described as far-reaching, it could also be described as narrow because it appeared to relate only to discrimination on grounds of sex. Did any other constitutional provision provide protection against discrimination on other grounds?

17. Mr. VALDEZ (Ecuador), replying to the questions raised so far, said he would first respond to the request to indicate what progress had been made in the country's return to a normal constitutional régime. Two years previously, the military Government had, of its own free will, taken positive measures towards that end. As a first step, the Ecuadorian people had been called upon to choose, by means of a referendum, between a new draft constitution and a draft revision of the Constitution that had been in force since 1945. The referendum had been held on 16 January 1978. Of a total population of 6.5 million inhabitants, 2.8 million had participated in the referendum; persons unable to read and write and persons under the age of 18 years had not participated. Of those who had participated, 80 per cent had decided in favour of the new Constitution.

18. The Government had then arranged for the first round of presidential elections to be held on 16 July 1978. Under the law, a candidate had to receive over 50 per cent of the votes cast in order to be elected; if no candidate received that number of votes, a second round of elections confined to the two candidates receiving the highest number of votes in the first round was held. Between January and July 1978 an active and orderly election campaign, in which fifteen political parties had taken part, had been conducted in Ecuador. In the elections of 16 July 1978, none of the five candidates for the office of President of the Republic had obtained the required majority, and the second round of elections was to be held on 8 April 1979. The election of members of the National House of Representatives would take place at the same time, and the newly elected President and members of the National House of Representatives would then be officially inaugurated on 10 August 1979. The new Constitution would enter into force on the date on which the President of the Republic took office; until that date, the 1945 Constitution would remain in force. There was no difference in meaning between the terms "Constitution" and "Political Charter", both being used to refer to the same instrument.

19. In the first round of presidential elections, only those on the electoral rolls, which did not include persons unable to read and write, had been permitted to vote; under the new Constitution, however, illiterate persons, too, would be able to take part in elections. During the past five years, the proportion of illiterate persons in Ecuador had dropped from 33-34 per cent to 28 per cent of the population. That was due to the literacy campaigns being carried out by the Government and by private bodies such as the National Union of Journalists. Since primary education was compulsory from the age of seven, the problem was one affecting mainly adults.

20. He stressed that there were no political prisoners in Ecuador now, nor had there been in July 1977. No trade union member was under arrest in respect of any offence connected with trade union activities. Indeed, it was precisely because there were no political prisoners that there had been such widespread participation in the presidential elections.

21. Reference had been made to the scope of article 44 of the new Constitution. The terms of that article were not new since they were already embodied in the 1945 Constitution. All the covenants and other international instruments on human rights ratified by Ecuador were now part of the law of the land, and their provisions could therefore be invoked before the courts by any citizen who felt that his rights had been violated. A citizen could also have recourse to the National Human Rights Committee, whose Chairman was a member of the Committee, Mr. Prado Vallejo; that body was diligent in ensuring observance of human rights and could, where necessary, refer any matter to the courts, or, after 10 August 1979, to the Tribunal of Constitutional Guarantees. In addition, article 4 of the new Constitution condemned all forms of colonialism, neo-colonialism and racism. All human rights were thus fully guaranteed in Ecuador and not merely by reference to discrimination on grounds of sex. Further information in that connexion appeared in the additional information before the Committee.

22. There was no longer any trace of the former state of emergency, the full rights of citizens having been restored so that all could freely take part in the referendum of January 1978 and in the presidential election of July 1978.

23. A question had been asked regarding the family estate. In that connexion, the State rendered assistance by making loans available through financial institutions or building societies, and any immovable property acquired by means of such loans was deemed by law to form part of the family estate. Immovable property thus acquired, not only by parents for their children but also by unmarried persons on their own behalf or on behalf of any children they might have in the future, was likewise deemed to form part of the family estate. For the time being, the assets comprising the family estate were restricted to a maximum value of approximately \$25,000, although that figure would probably be increased as the value of property rose.

24. Under the agrarian law, any land that was not being exploited economically and that did not yield a given percentage of its value, in accordance with the standards laid down by the Government, reverted to the State. In that event, the National Institute for Agrarian Reform assumed responsibility in the matter and reallocated the land among the peasants. It was also responsible for the allocation of unused land. He would be pleased to provide members with detailed figures in that connexion and with further information regarding measures to promote agrarian reform.

25. The Government's economic development plans provided for an extension of the co-operative movement. In Ecuador, seven or more citizens could form a co-operative for the purpose of exploiting land or acquiring immovable property in urban areas. In that way, the marginal sections of the population were being integrated into the national economy. A national co-operative bank had also been established to provide loans for those wishing to form co-operatives.

26. Mr. ESPERSEN asked whether the first sentence of article 88 of the Code of Penal Procedure, relating to treatment of the accused, meant that a person could be detained only if he was suspected of having committed a crime. Could, for example, a suspect be released if another person agreed, should the suspect abscond from justice, to be detained in his place until such time as he was apprehended?

27. Mr. TOMUSCHAT said that the Committee should have far more information than appeared in the reports about the application in Ecuador of the rights guaranteed under article 14, paragraph 3, of the Covenant.

28. Mr. LALLAH, referring to article 25(b) of the Covenant, said he was particularly pleased to hear that, under the new Constitution, illiterate persons would be able to take part in elections, since that was the very group which needed representation. He noted, however, that, unlike the rest of the population, illiterate persons would not be under an obligation to vote but would simply have the option of doing so. In that connexion, he asked whether it was the Government's intention to help such persons to participate effectively in the vote by providing for the use of special colours or symbols, for the various candidates.

29. The fact that it was an offence not to vote might seem to some to be an infringement of the right to freedom of expression. He would like to know the Government's position on that point, and what qualifications were required of candidates who stood for election.

30. He noted that members of the armed forces of Ecuador did not have the right to vote, whereas under the Covenant that right was guaranteed to all citizens. In some countries, members of the armed forces were permitted to cast their vote by post, and he wondered whether there was any special reason why they were deprived of the right to vote in Ecuador.

31. Mr. VALDEZ (Ecuador) said that, under the Code of Penal Procedure, a suspect in a criminal case could be held in custody, for the purpose of preliminary inquiries, for a maximum of 48 hours. If there were sufficient grounds for prolonging his detention, an order to that effect had to be issued at the end of the 48-hour period, specifying the legal reasons on which it was based. If a suspect was detained beyond the initial 48-hour period without an order for his further detention, he could apply for a writ of habeas corpus to secure his release.

32. The accused was entitled to know the charge against him and to receive legal aid free of charge. He was also entitled to question witnesses and, if necessary, to have the assistance of an interpreter throughout the trial.

33. He assured the Committee that all the rights laid down in article 14, paragraph 3, of the Covenant were guaranteed under Ecuadorian law, the provisions of which were in fact often broader in scope in that respect than those of the Covenant. Full details of the implementation of that paragraph would be supplied in the next report.

34. The amount of bail in Ecuador was set by the judge according to circumstances and was held as long as the accused failed to appear, during which time the trial was suspended.

35. Mr. Lallah had asked about the participation of illiterates in the electoral process. In the recent elections, different colours had been used to denote the various parties on the ballot sheets. Although participation in the vote was mandatory for one group but not for another, compulsory suffrage meant only that citizens must go to the polls, not that they had to vote. They had the option of abstaining by leaving the ballot blank or rejecting the candidate by invalidating the ballot. All that was required was that citizens must take part in the political life of the country. Members of the armed forces were the only citizens who could not take part in elections, either as candidates or as voters. That restriction had existed traditionally in Ecuador on the grounds that participation by members of the armed forces would be inconsistent with their role in ensuring the orderly conduct of elections.

36. Mr. OPSAHL said that the example of Ecuador could encourage the Committee in its future work because Ecuador was a developing country which had accepted the Optional Protocol to the Covenant and had made progress in the implementation of human rights. It should stimulate the Committee to focus attention on the indivisibility of all human rights - economic, social and cultural on the one hand, and civil and political on the other. The Committee should stress the interdependence of those rights, and might consider undertaking or sponsoring a study showing how, in a country like Ecuador, the exercise of such rights as the right to health and the right to education was directly linked to the implementation of civil and political rights.

37. Turning to the additional information submitted by Ecuador, he expressed interest in the establishment of the Tribunal of Constitutional Guarantees. Article 141, paragraph 3, and article 9 of the new Constitution, quoted in paragraphs 5 and 9 respectively of the additional information, were of particular importance. He asked how the procedure involving the Tribunal of Constitutional Guarantees related to persons who did not claim to be victims themselves and whether it was a last resort.

38. Mr. GRAEFRAETH asked whether the Tribunal of Constitutional Guarantees referred cases back to the elected body, the National House of Representatives, for decision. If so, that seemed to be an interesting and sensible procedure.

39. He also wanted to know what were the "competent authorities" and "constituted authorities" referred to in paragraphs 13 and 16 respectively of the additional information, and what kind of jurisdiction could be exercised by the political office-holders and police judges as mentioned in paragraph 22.

40. Mr. VALDEZ (Ecuador) said that under the new Constitution everyone could have recourse to the Tribunal of Constitutional Guarantees in matters involving human rights violations. In the case of arbitrary detention, the individual concerned could appeal to a judge and subsequently, if he failed to obtain release, to the Tribunal. If there were no grounds for detention, the Tribunal would order the individual's release; its decision was binding. The individual could have direct access to the Tribunal, which therefore could be a body of last instance or of first instance. The Tribunal could refer a case to the National House of Representatives if it involved violations of the Constitution by public authorities.

41. In reply to a question put by Mr. Graefrath, he noted that the police judges referred to in paragraph 22 were competent only to inquire into minor police offences. Criminal matters had to be brought before the criminal court judge.

42. Sir Vincent EVANS said that he was concerned about the position of the indigenous Indian tribes of Eastern Ecuador, especially in view of the discovery of oil in that region and the disruption of their life that might ensue. He wondered what measures were taken in Ecuador to protect the indigenous people, their families and their cultural, religious and language rights, in accordance with article 27 of the Covenant.

43. Mr. TOMUSCHAT noted that article 39 of Ecuador's new Constitution did not prohibit language discrimination.

44. Mr. ESPERSEN asked whether the last sentence of paragraph 43 of the additional information submitted by Ecuador implied the possibility of forced migration and whether it was consistent with the provisions of article 27 of the Covenant.

45. Mr. VALDEZ (Ecuador) said that Ecuador had a large indigenous population and was making a considerable effort to integrate it into the economic life of the country, while at the same time preserving its unique cultural values, through public education, missionary work and other measures. Teachers in primary schools in areas inhabited by the indigenous population had to know the vernacular language as well as Spanish, and everyone was entitled to use his own language.

46. There had been no population shifts in the areas where oil had been discovered because those areas were largely uninhabited. In inhabited areas, public funds were available to buy land and to resettle the indigenous population, but so far no situation necessitating such measures had arisen. The new Constitution provided for the preservation of the indigenous population's cultural values and for instruction in the vernacular language. There was no discrimination based on language.

The meeting rose at 1.05 p.m.