



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

VIEWS

Communication No. 1036/2001

<u>Submitted by:</u>	Bernadette Faure (represented by her father, Leonard Faure)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Australia
<u>Date of communication:</u>	19 June 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 6 December 2001 (not issued in document form)
<u>Date of adoption of Views:</u>	31 October 2005

* Made public by decision of the Human Rights Committee.

Subject matter : Receipt of unemployment benefits conditioned upon performance of compulsory labour

Procedural issues: Exhaustion of domestic remedies – Substantiation, for purposes of admissibility – Scope of the Covenant

Articles of the Covenant: Articles 2 and 8

Articles of the Optional Protocol: Article 5, paragraph 2(b)

On 31 October 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1036/2001. The text of the Views is appended to the present document.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-fifth session

concerning

Communication No. 1036/2001**

Submitted by: Bernadette Faure (represented by her father,
Leonard Faure)

Alleged victim: The author

State Party: Australia

Date of communication: 19 June 2001 (initial submission)

The Human Rights Committee, established under article 28 of the International
Covenant on Civil and Political Rights,

Meeting on 31 October 2005,

Having concluded its consideration of communication No. 1036/2001, submitted to
the Human Rights Committee on behalf of Bernadette Faure under the Optional Protocol to
the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of
the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, initially dated 19 June 2001, is Bernadette Faure, an
Australian and Maltese national, born 22 April 1980. She claims to be a victim of a violation
by Australia of her rights under articles 2, paragraphs 2 and 3(a)-(c), and 8, paragraph 3. She
is represented by her father, Leonard Faure, who acts with her express authority.

** The following members of the Committee participated in the examination of the present
communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo
Castillero Hoyos, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil,
Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley,
Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member
Mr. Ivan Shearer did not participate in the adoption of the present decision.

The text of an individual opinion signed by Committee member Ms. Ruth Wedgwood
is appended to the present document.

Factual background

2.1 After leaving high school aged 16 in 1996, the author continuously drew unemployment benefits. On 7 July 1997, the *Social Security Legislation Amendment (Work for the Dole) Act 1997* (“the 1997 Act”) entered into force.

2.2 On 3 November 2000, after having been referred to and attending an “Intensive Assistance” program at IPA Personnel Ltd (a government-accredited private employment agency), the author failed to comply with the terms of her “Preparing for Work Agreement” (first “activity test” breach in two years). As a result, on 13 November 2000, a rate reduction period was imposed on her unemployment benefit.¹

2.3 Following completion of the “Intensive Assistance” program, the author was referred on three occasions to an employer, Mission Australia, to undertake the Work for Dole program, with an interview scheduled on each occasion. She did not attend any interview. In the meantime, on 12 June 2001, the Human Rights and Equal Opportunities Commission (HREOC) also declined to investigate a complaint lodged on her behalf that the Work for Dole program amounted to a forced or compulsory labour, reasoning that the alleged violation arose by direct operation of legislation, rather than as a result of a decision-maker’s discretion and therefore fell outside of its statutory mandate. HREOC observed, in addition, that “...reducing or canceling unemployment assistance because a person does not want to participate in the Work for the Dole program does not constitute forced or compulsory labour, as the nature of the punishment and the degree of involuntariness does not reach the threshold required to breach article 8(3)(a) of the [Covenant].”

2.4 On 9 July 2001, the author commenced the Work for Dole program, finishing her initial employment placement on 7 October 2001. After starting a second employment placement on 24 October 2001, she did not attend the placement on 30 October and again on 5-6 November. On 22 November 2001, a rate reduction period was imposed on her unemployment benefit for her unexplained absence on 30 October (second “activity test” breach in two years).²

2.5 On 6 December 2001, her unemployment benefit was entirely cancelled for her unexplained absence on 5-6 November 2001 (her third “activity test” breach in two years) and she left the Work for Dole program. Prior to the cancellation, she was contacted and claimed that she had been too ill to attend the employment placement. She was unable to provide a medical certificate for her absence, claiming to have lost the original one provided by her doctor, and was unable to provide a copy from the doctor. The cancellation resulted in a two months non-payment period of her unemployment benefits.

2.6 On 10 December 2001, an administrative review officer affirmed the decision to cancel the author’s unemployment benefit. On 26 February 2002, her unemployment benefits were reinstated following a renewed application for payment of unemployment benefits.

¹ The State party explains that the reduction in payment for a first activity test breach in two years is 18% of the person’s maximum basic rate of payment for 26 weeks.

² The State party explains that the reduction in payment for a second activity test breach in two years is 24% of the person’s maximum basic rate of payment for 26 weeks.

The complaint

3.1 The author alleges that she was required to perform forced or compulsory labour in violation of article 8, paragraph 3(a), of the Covenant, in particular by being required to attend the Work for Dole program. If she refused to participate, she would be impoverished by a reduction or suspension of her unemployment benefits.

3.2 The author further claims that she is without a remedy for her complaint, in violation of article 2, paragraphs 2 and 3(a),(b) and (c), of the Covenant, as her complaint to HREOC was not accepted for consideration. In particular, she argues that HREOC had the authority to make reports or recommendations to the Attorney-General which could have been utilized in this case.

The State party's submissions on admissibility and merits

4.1 By submissions of 17 June 2002, the State party challenges both the admissibility and merits of the communication. The State party details the operation of its WFD program, imposing on persons such as the author the obligation to perform certain community labour, upon pain of reduction of unemployment benefits. The scheme is described in greater detail in Annex to the communication.

4.2 As to the admissibility of the communication, the State party argues that the principal claim under article 8 is inadmissible for failure to exhaust domestic remedies, as the author's participation in the Work for Dole program could have been challenged under an extensive domestic social security review and appeals system established by law. Administrative review is available for any decision made in relation to social security entitlement – thus, a decision to include participation in a Work for Dole program in a person's 'Preparing for Work' Agreement is subject to review, as is a decision that a person participate in a Work for Dole program as part of the general activity test. This objective review is carried out by specialist officer, not being the original decision-maker. Thereafter, review is available in the Social Security Appeals Tribunal and appeal to the Administrative Appeals Tribunal. Further appeal to the federal courts and the High Court of Australia then is available.

4.3 In the present case, the author only sought an internal administrative review on 10 December 2001, not availing herself of the further appeals available. The communication was submitted well prior to that date, despite the author having been notified on numerous occasions as to her appeal rights. She can thus be taken to have been reasonably aware of her review rights, and any doubts she may have about their effectiveness cannot absolve her of her obligation to pursue them.

4.4 The author also did not apply for judicial review of HREOC's decision that it did not have jurisdiction to entertain her complaint on the basis that it concerned direct operation of social security law, rather than any exercise of discretion by a decision-maker. Alternatively, the State party argues that the author could have applied to Federal Court directly for judicial review of the decision to refer her to a Work for Dole program.

4.5 Turning to the subsidiary claim under article 2, the State party argues that the claim under article 2 is incompatible with the Covenant and further inapplicable to the facts pleaded. The State party refers to the Committee's jurisprudence that article 2 is of accessory nature to the substantive articles of the Covenant, and thus, in the absence of a violation of

article 8 of the Covenant, a separate article 2 issue cannot arise. In addition, the communication contains no claims that are capable of amounting to a breach of article 2, nor does the communication set out the nature of the alleged violation claimed.

4.6 The State party adds that this claim is inadmissible for failure to exhaust domestic remedies on the basis of the arguments set out in this respect in relation to article 8, *supra*. Finally, it contends this claim is unsubstantiated, for purposes of admissibility: it is a mere assertion, with no evidence submitted to suggest that the author has been denied an effective remedy.

4.7 On the merits of the article 8 claim, the State party points out that in the absence of substantive consideration of the issue of forced labour by the Committee, the Committee should be guided by the approaches of other international organizations.³ While reference to the ILO conventions on forced labour (No. 29 of 1930) and on the abolition of forced labour (No. 105 of 1957) was deliberately omitted from the Covenant because of difficulties with the ILO definitions, it is suggested that conclusions of the ILO's Committee of Experts can still be drawn on for assistance in determining the "permissible" forced or compulsory labour that can be imposed. An academic commentator argues that States must meet certain minimum labour and social welfare law standards contained in the two ILO conventions in order to come within the exceptions set out in article 8, paragraph 3, of the Covenant.⁴

4.8 The State party concedes that the ILO Committee of Experts monitoring Chilean legislation on unemployment benefits considered a loss of benefits imposed if a person refused to carry out community relief work to be "equivalent to a penalty in the sense of the Convention." It distinguishes the schemes, however, on the basis that, in Chile, payment of unemployment benefits was conditional upon payment of contributions for 52 weeks of the preceding two years, while in Australia benefits are not conditional upon any prior contribution. In addition, Chilean unemployment benefits are time-bound, while in Australia they are not. In the State party's view, therefore, the Committee of Experts' comments on Chile are not presently relevant.

4.9 Turning to the relatively scarce jurisprudence arising under the similar terms of article 4 of the European Convention on Human Rights, the State party refers to the case of Van der Musselle v Belgium.⁵ The European Court there held that a law student, voluntarily choosing to enter the legal profession, could not be held to have been required to perform forced labour by a requirement to undertake a certain amount of pro bono work during his clerking apprenticeship in order to register as advocates. In the Court's view, the service did not impose a burden so excessive or disproportionate to the advantages attached to future

³ The State party refers to but two occasions where the issue was even touched on: Timmerman v The Netherlands Communication No. 871/1999, Decision adopted on 29 October 1999, and Wolf v Panama Communication No. 289/1988, Views adopted on 26 March 1992. [Note to the Committee: In the first case, the Committee declared inadmissible a claim that engaging in certain professional employment on a disputed pay scale amounted to forced labour, while in the second, the Committee found unsubstantiated a claim that a remind prisoner had to perform forced labour while in pre-trial custody.]

⁴ Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, N.P. Engel, Kehl am Rhein, 1993, at 157.

⁵ Series A, 70 (1983).

exercise of the profession that it could be treated as not having been voluntarily accepted beforehand. Given that the governing ideas of the exceptions to article 4 were the general interest, social solidarity and what is in the ordinary or normal course of affairs, the requirement of service was not disproportionate or unreasonable.

4.10 In X v The Netherlands,⁶ the European Commission of Human Rights found that a suspension for 26 weeks of a builder's unemployment benefit due to the builder's refusal, on grounds of alleged over-qualification, of a job offer made to him did not amount to forced or compulsory labour. The Commission reasoned that nobody was forced, by penalty, to accept a job offer made by competent public authorities. Rather, acceptance of such an offer was simply a condition to receipt of unemployment benefits, a refusal being penalized only by temporary loss of those benefits.

4.11 The State party observes that the Covenant's exception for "any work or service which forms part of normal civic obligations" is not specifically defined, but should be interpreted against the backdrop of the minimum standards contained in ILO Convention No. 29. That Convention, in article 2, paragraph 2(e), excludes:

"...minor communal services of a kind which, being performed by the members of the community in the direct interests of the said community, can therefore be considered as normal civic obligations incumbent on members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services."

4.12 It is also relevant that article 11 sets out a minimum age of 18 and prior medical examinations for those required to perform compulsory labour, while article 12 states that the maximum labour period shall not exceed sixty days per year. Article 13 provides that the working hours in question should correspond to those of voluntary labour, and article 14 sets out cash remuneration not less than prevailing for similar work in the district. Article 15 applies workers' compensation and incapacitation legislation to both forms of labour. The State party argues that the Work for Dole program generally satisfies the minimum standards of the Convention. It is quite proper, as recognized in the above-mentioned ILO instruments, to place reasonable conditions on social security payments. By participating in the Work for Dole program, long-term unemployed persons enhance their skills, employability and thus future self-sufficiency. Unemployment benefits in Australia are not dependent on prior contributions, nor are they time-bound. Nobody is forced to accept them, but if an individual does choose to do so, compliance with participation in a Work for Dole program is a reasonable condition.

4.13 The State party argues that the present communication raises issues of compulsory rather than forced labour, given the absence of any physical or mental constraint. Applying the Van der Mussele test developed by the European Court, the author's participation in the Work for Dole program does not even reach the threshold of compulsory labour, as neither the necessary intensity of penalty or of involuntariness are involved. The State party points out that it carefully considered the program's compatibility with its international obligations, as borne out by statements made during the second parliamentary reading of the draft Bill:

⁶ No. 7602/76, 7 DR 161 (1976).

“The government is cognizant of its international obligations. It has taken advice of the Attorney-General’s Department that a work for the dole initiative should not contravene our international obligations, provided that the work offered under work for the dole is ‘suitable’ and ‘reasonable’ for that person. The fact that payment of unemployment allowance is not based on any prior mandatory contribution, coupled with the positive benefits of work for the dole for participants, means that the initiative should be regarded as reasonable in its requirement of a contribution to the community from participants.”

4.14 Assessing the two dimensions of penalty and involuntariness, the State party points out that a failure to participate in the program, without reasonable excuse, initially only leads to a reduction in the rate of unemployment benefits payable, with repeated failure – again without reasonable excuse – leading to non-payment for 2 months only. There is no absolute right to social security, and ILO standards on unemployment benefits accept that they may be withdrawn where an individual refuses an offer of suitable and reasonable employment.⁷ In this light, there is no element of penalty for failure to participate in the Work for Dole program that would raise participation in the program to the threshold of compulsory labour.

4.15 In terms of involuntariness, the State party argues that the program modalities satisfy requirements of reasonableness and proportionality. Unemployed people are not required to accept benefits but, if they do, a pre-condition to receipt may be participation in the Work for Dole program. Long-term youth unemployment is a serious problem in Australia, and this program is part of a series of innovative responses to the problem. The program is based on the concept of mutual obligation between an unemployed person and the community supporting him or her. The relevant projects provide real tangible benefits to communities in the form of community facilities, infrastructure, care and assistance. The program is specially designed to improve the skills, employability, self-esteem and experience of young unemployed people. 18-20 year olds are only required to work 12 hours per week, while older persons work 15 hours per week, with working hours corresponding to those in the general marketplace.

4.16 In addition, participants can only work in the program for six months at a time, and for six months per year. Job search requirements applicable to participants are reduced to two employer contacts per fortnight. Checks and balances, coupled with review processes, ensure specific work is suitable and reasonable, with a participant being able to raise these issues. The State contracts personal injury and third party liability insurance for participants. Finally, a fortnightly supplement is paid in view of the extra costs. In light of these elements, the burden the Work for Dole program imposes on young unemployed persons as a condition of receiving unemployment benefits is not unreasonable, or disproportionate when weighed up to the positive benefits received by them and the community.

4.17 The author had received unemployment benefits for four years before her referral to the program, at age 21. Previously, she had been involved in a number of activities enhancing her employability, including a year-long Intensive Assistance program. Her benefits were cancelled because of her failure to provide supporting evidence for alleged illness and thus

⁷ ILO Convention No. 44 of 1934 Ensuring Benefit or Allowances to the Involuntarily Unemployed and ILO Convention No. 168 of 1988 Concerning Employment Promotion and Protection against Unemployment.

being unable to demonstrate a reasonable excuse for her absence. This decision was upheld on review. In the review, she also contended she was unable to carry out concreting work as part of the project. However the Community Work Co-ordinator for the project advised that the concreting was minor, there were other young women involved and nobody was asked to do anything they were incapable of physically performing. In the State party's view, these processes show how checks and balances work to ensure that Work for Dole participants are given reasonable and suitable work.

4.18 In conclusion, the State party invites the Committee to find that the author was not required to engage in compulsory labour, within the meaning of article 8 of the Covenant, or that, if so, the labour is justified by the exception of "normal civic obligation" contained in article 8, paragraph 3(c)(iv), resulting in no violation of the Covenant.

4.19 On the merits of the article 2 claims, the State party argues that as the substantive claim under article 8 is either inadmissible or without merit, the assertion of an article 2 claim must also be considered to be without merit. In any event, the author has not provided evidence sufficient to enable a proper consideration of this claim. Even if the communication could be said to contain any substantiated evidence, the State party contends, in the light of its admissibility submissions on article 2, that it fully protects Covenant rights under common law and Federal, State and Territory legislation. In the present case, numerous appeal and review instances were available but not utilized. Her failure to exhaust domestic remedies also supports a finding that there is no violation.

4.20 On the specific claim that HREOC did not make a report and recommendations to the Attorney-General, the State party points out that this was because HREOC rejected the author's complaint and thus cannot serve as a basis for an article 2 claim.

The author's comments on the State party's submissions

5.1 By letter of 1 September 2002, the author challenged the State party's submissions, rejecting the present applicability of the Van der Mussele reasoning of the European Court, on the basis that she was not in a apprentice-teacher relationship or training for a specific vocation compulsory labour. In any event this precedent is inapplicable as she was never offered, and thus could not have refused, *suitable* work, as said to be required by the ILO instruments. Rather, she was enrolled into the Work for Dole program, and subsequently had her unemployment benefits suspended, in the absence of a prior offer of suitable work. She emphasizes that she was enrolled into the Work for Dole program for purposes of doing community work. She rejects the European Commission's reasoning in the X case that suspension of unemployment benefits cannot be taken as amounting to payments later suspended without having being offered such work.

5.2 The author argues that the threat, real or perceived, of an entire suspension of unemployment benefits in the event of her failure to participate in the Work for Dole program must be taken as imposing a high degree of mental constraint, contending that "the prospective scenario of starvation cannot be reasonably construed otherwise".

5.3 The author rejects the contention that domestic remedies were not exhausted, arguing that HREOC and certain Work for Dole administrative correspondence did not explicitly advise a right of review. In any event, the threat of cancellation of unemployment benefits described in the latter conveyed the impression that no right of review was available. The

author cites the Committee's decision in Landry v Canada⁸ as support for the proposition that in such circumstances the State party is stopped from advancing a claim that domestic remedies have not been exhausted.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 On the issue of exhaustion of domestic remedies, the Committee observes that there is no dispute that the author comes squarely within the scope of the impugned legislation, with the alleged violation deriving from the direct application of the law to her. As the Committee observed in a similar context, it would be futile to expect an author to bring judicial proceedings which would merely confirm the undisputed fact that the primary legislation in question, in this case the 1997 Act and the requirement of participation in the Work for Dole program imposed pursuant to it, does in fact apply to her, when what is being challenged before the Committee is the substantive operation of that law, the content of which is not open to challenge before the domestic courts.⁹ As the State party has not shown how the substantive content of the Work for Dole regime set out in the 1997 Act that is applicable to her can be challenged in the domestic courts, the Committee considers that it is not precluded by article 5, paragraph 2(b), of the Optional Protocol from consideration of the case.

6.3 As to the argument that the claims under articles 2 and 8 fall *ratione materiae* outside the scope of the Covenant and are insufficiently substantiated, the Committee considers that the author has advanced arguments of a sufficient weight to substantiate, for purposes of admissibility, her claims under these articles of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

7.2 Turning first to the claim under article 2 of the Covenant, the Committee recalls that article 2 requires a State party to provide an effective remedy for breaches of Covenant rights. In its decision in the case of Kazantzis v Cyprus,¹⁰ the Committee stated that "Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States parties must ensure that individuals also have accessible, effective and enforceable remedies to vindicate those rights A literal reading of this provision seems to require that an actual

⁸ Communication No. 112/1981, Decision adopted on 8 April 1986.

⁹ See the Committee's rejection of the same argument with respect to mandatory detention provisions of the *Migration Act* in A v Australia, Case No 560/1993, Views adopted on 4 March 1997, C v Australia, Case No 900/1999, Views adopted on 28 October 2002, Baban et al. v Australia, Communication 1014/2001, Views adopted on 6 August 2003, and Bakhtiyari v Australia, Case No 1069/2002, Views adopted on 29 October 2003.

¹⁰ Case No 972/2001, Decision adopted on 7 August 2003, at paragraph 6.6.

breach of one of the guarantees of the Covenant be formally established as a necessary prerequisite to obtain remedies such as reparation or rehabilitation. However, article 2, paragraph 3(b), obliges States parties to ensure determination of the right to such remedy by a competent judicial, administrative or legislative authority, a guarantee which would be void if it were not available where a violation had not yet been established. While a State party cannot be reasonably required, on the basis of article 2, paragraph 3(b), to make such procedures available no matter how unmeritorious such claims may be, article 2, paragraph 3, provides protection to alleged victims if their claims are sufficiently well-founded to be arguable under the Covenant.” (internal footnote omitted)

7.3 Applying this reasoning to the present claim that the State party did not provide an effective remedy for the alleged breach of article 8 of the Covenant, the Committee observes, with reference to its admissibility considerations identified above in the context of exhaustion of domestic remedies, that, in the State party’s legal system, it was and remains impossible for a person such as the author to challenge the substantive elements of the Work for Dole program, that is, the obligation imposed by law on persons such as the author, who satisfy the pre-conditions for access to the program, to perform labour in exchange for receipt of unemployment benefits. The Committee recalls that the State party’s proposed remedies address the question of whether or not an individual in fact satisfies the requirements for access to the program, but no remedy is available to challenge the substantive scheme for those who are by law subject to it.

7.4 As the Committee’s consideration (*infra*) on the merits of the substantive article 8 shows, the question presented undoubtedly raises an issue, in the language of the Committee’s decision in Kazantzis, that was “sufficiently well-founded to be arguable under the Covenant”. It follows, therefore, that the absence of a remedy available to test an arguable claim under article 8 of the Covenant such as the present amounts to a violation of article 2, paragraph 3, read together with article 8, of the Covenant.

7.5 Concerning the principal claim under article 8, paragraph 3, of the Covenant, the Committee observes that the Covenant does not spell out in further detail the meaning of the terms “forced or compulsory labour”. While the definitions of the relevant ILO instruments may be of assistance in elucidating the meaning of the terms, it ultimately falls to the Committee to elaborate the indicia of prohibited conduct. In the Committee’s view, the term “forced or compulsory labour” covers a range of conduct extending from, on the one hand, labour imposed on an individual by way of criminal sanction, notably in particularly coercive, exploitative or otherwise egregious conditions, through, on the other hand, to lesser forms of labour in circumstances where punishment as a comparable sanction is threatened if the labour directed is not performed. The Committee notes, moreover, that article 8, paragraph 3(c)(iv), of the Covenant exempts from the term “forced or compulsory labour” such work or service forming part of normal civil obligations. In the Committee’s view, to so qualify as a normal civil obligation, the labour in question must, at a minimum, not be an exceptional measure; it must not possess a punitive purpose or effect; and it must be provided for by law in order to serve a legitimate purpose under the Covenant. In the light of these considerations, the Committee is of the view that the material before it, including the absence of a degrading or dehumanizing aspect of the specific labour performed, does not show that the labour in question comes within the scope of the proscriptions set out in article 8. It follows that no independent violation of article 8 of the Covenant has been made out.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 2, paragraph 3, read together with article 8, of the Covenant.

9. While in accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, the Committee is of the view that in the present case its Views on the merits of the claim constitutes sufficient remedy for the violation found. The State party is under an obligation to ensure that similar violations of the Covenant do not occur in the future.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Annex

The State party's description of the WFD program

The WFD program was introduced by the 1997 legislation. Its object, according to the statute, is “to reinforce the principle of mutual obligations applying to [unemployment benefits] by recognizing that it is fair and reasonable that persons in receipt of such payments participate in approved programs of work in return for such payments and to set out the means by which they may be enabled, or required, to undertake such work”.

4.3 The State party points out that a Work for Dole program cannot require more than 24 or 30 hours' work (up to and beyond 21 years of age, respectively) per fortnight, and an individual is referred to a program for a maximum of 6 months per year. To qualify for an unemployment benefit, a person must generally

- (a) be unemployed;
- (b) satisfy the “activity test” or be exempt from it by virtue of, for example, being in full-time education, being in a remote area, giving birth to a child, and so forth. The “activity test” requires a person to be actively seeking and willing to undertake suitable paid work and to attend such programs, for example the Work for the Dole program, and training that may be directed;
- (c) be prepared to enter into and comply with a ‘Preparing for Work’ Agreement, which may include participating in a Work for Dole program; and
- (d) satisfy certain other formal criteria of age, residence and the like.

4.4 After receiving an unemployment benefit for six months, an unemployed person must, if subject to “activity testing”, commence a program or activity of their choice, of which the Work for Dole program is one, geared towards enhancing their employment prospects. Failure on the part of the person to choose a program or activity results in referral for a Work for Dole placement for six months as a matter of administrative practice if:

- (a) the person receives the full rate of unemployment benefit;
- (b) the person possesses the skills and experience to perform the required tasks;
- (c) the tasks of the employment placement in question are medically appropriate and do not otherwise pose occupational health and safety; and
- (d) certain other requirements are satisfied.

4.5 Once a Work for Dole placement begins, the person's unemployment benefit is augmented by AUS\$21 per week reflecting the extra costs of participating in the program. Community Work Co-ordinators both assist the person in the placement and submit, under strict requirements, participation reports to ensure that participation requirements are being met.

4.6 Failure to commence or complete the Work for Dole program, including where this forms part of a Preparing for Work Agreement, or failure to comply with conditions of a

Work for Dole program, result, in the absence of reasonable excuse, in an “activity test” breach and accompanying financial penalties in the form of reduced payment of unemployment benefits. Any third such breach within a two year period results in a two-month non-payment of unemployment benefits.

APPENDIX

Individual opinion by Committee member Ms. Ruth Wedgwood

In a world that is still replete with problems of caste, customary systems of peonage and indentured labor, forced labor in remote areas under conditions that often mimic slavery, and the disgrace of sexual trafficking in persons, it demeans the significance of the International Covenant on Civil and Political Rights to suppose that a reasonable work and training requirement for participation in national unemployment benefits in a modern welfare state could amount to “forced or compulsory labor” within the meaning of Article 8(3)(a).

Australia has a program of unemployment benefits that supports new job seekers for six months, so long as they are willing to accept gainful employment. After six months, continued receipt of benefits may be conditioned on the participant’s willingness to enhance his or her job skills and give something back to the community, through a “Work for Dole” program. The latter program is limited to 12 hours per week (for persons under 21 years of age), and 15 hours per week (for persons of 21 years or older).

The author of this communication, Ms. Bernadette Faure, began to draw unemployment benefits immediately after leaving high school in 1996. In November 2000, after attending an “Intensive Assistance” program at a government-accredited employment agency, she failed to comply with the terms of a “Preparing for Work Agreement” and her public benefit was partially reduced. She then failed to attend three scheduled interviews with an employer called “Mission Australia” as part of the Work for Dole program. Finally, in July 2001, she took part successfully in the “Work for Dole” program and worked at a job placement until 7 October 2001. She started another placement on 24 October 2001, but failed to show up on 30 October or 5-6 November 2001, and did not corroborate her claim of illness with any medical certificate. The unexcused absence on 30 October resulted in a rate reduction of 24 percent and the second absence resulted in cancellation of her benefits. Her benefits were reinstated on 26 February 2002.

Ms. Faure asserts that Australia has imposed a type of “forced or compulsory labor” forbidden by the Covenant, by requiring that she should take part in a work and training program as a condition of receiving public unemployment benefits. The state party argues that the program contributes to the acquisition of employment skills, and is a form of “mutual obligation” that respects the claims of the community and the job seeker, Ms. Faure characterizes the work requirement in terms one might have thought originally aimed at horrific instances such as the forced labor required by colonial powers to build canals and roads, rather than the mutual obligations of a modern democratic society.

Professor Manfred Nowak, in his work on the UN Covenant on Civil and Political Rights, CCPR Commentary (2nd edition 2005), at page 202, has concluded that “The mere lapse of unemployment assistance when a person refuses to accept work not corresponding to his or her qualifications does not ... represent a violation [of Article 8]; in this case, neither the intensity of the involuntariness nor that of the sanction reaches the degree required for forced or compulsory labour.” Professor Nowak’s common-sense assessment is faithful to the purposes of Article 8. On the uncontested facts of this case, I would dismiss the author’s claim of “forced or compulsory labor” as inadmissible for lack of substantiation.

The author has also failed to exhaust administrative and judicial remedies. In her complaint, the author challenges the “Work for Dole” program because, *inter alia*, her work assignments were not “suitable” (e.g., she was required to learn how to apply “concrete” in a community project) and did not amount to training for a “specific vocation.” See Views of the Committee, paragraphs 4.17 and 5.1 *supra*. Thus, she says, her assignments cannot be characterized as apprenticeship or vocational training that might escape the opprobrium of “forced labor.”

But the author did not challenge the “suitability” of her assignments through the framework of administrative and judicial remedies available in Australia for a “Work for Dole” participant. A beneficiary is apparently entitled to challenge a particular work assignment, or dispute its use as a “general activity test” for the continued receipt of benefits. See *id.*, paragraphs 4.2 – 4.4, *supra*. The appeals include review by a specialist officer, and remedies in the Social Security Appeals Tribunal, Administrative Appeals Tribunal, federal courts and High Court.

So, too, after the author’s unexcused absences from her employment placement resulted in a loss of benefits, she declined to pursue any appeal of the decision beyond a first-level review, even though she was “notified on numerous occasions as to her appeal rights.” See *id.*, paragraph 4.3.

It is true that the author did seek early intervention by the Australian Human Rights and Equal Opportunities Commission, after failing to show up for three scheduled interviews at Mission Australia, and suffering an 18 percent reduction in her benefits. See *id.*, paragraphs 2.2-2.3. In a decision on 12 June 1991, the Australian human rights commission concluded that its jurisdiction was limited to the discretionary decisions of government personnel, rather than the review of statutory mandates. But the Australian human rights commissioners also observed on the merits that “reducing or canceling unemployment assistance because a person does not want to participate in the Work for the Dole program does not constitute forced or compulsory labour, as the nature of the punishment and the degree of involuntariness does not reach the threshold required to breach article 8(3)(a) of the Covenant.” The author did not apply for judicial review of the Commission’s decision.¹¹

By virtue of these facts, it is difficult to conclude that the author has exhausted her domestic remedies. Nor has she established that the State party failed to provide an effective remedy as required by Article 2 for an “arguable” violation of Covenant rights.

[signed] Ms. Ruth Wedgwood

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

¹¹ In *Baban et al. v. Australia*, Communication No 1014/2001, Views adopted on 6 August 2003, this member offered the view that the Committee “should not presume what the courts of the State party might decide in a particular case. A court's interpretation of parliamentary intent may be informed by Covenant norms, and the permissible inference that parliament would have wished to comply with the State party's treaty obligations.” See also *Young v. Australia*, Case No. 941/2000, Views adopted on 6 August 2003 (concurring opinion of R. Wedgwood).