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Chairperson: Mr. Rivas Posada

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

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

Concluding observations of the Human Rights Committee on the third periodic report of Madagascar (CCPR/C/MDG/CO/3/CRP.1)

1. **Mr. Amor** (Country Rapporteur) introduced the draft concluding observations. The draft contained two paragraphs still in square brackets, which would be clarified in due course by the Committee members who had proposed them.

Paragraph 1

2. *Paragraph 1 was adopted.*

Paragraph 2

3. *Paragraph 2 was adopted.*

Paragraph 3

4. **Mr. O'Flaherty** said that the normal English usage was "persons living with HIV/AIDS" rather than "persons infected with the HIV/AIDS virus".

5. **Ms. Wedgwood** suggested that "persons living with HIV/AIDS" should come first and "the disabled" second, to avoid giving the impression that the Committee considered HIV/AIDS to be a disability.

6. *Paragraph 3, as amended, was adopted.*

Paragraph 4

7. **Mr. Shearer** suggested adding a footnote to explain what the Bangalore Principles of Judicial Conduct were.

8. **Ms. Chanet** said that the footnote should also contain a reference to the Economic and Social Council resolutions concerning the Bangalore Principles.

9. **Sir Nigel Rodley** said that reference should also be made to the Basic Principles on the Independence of the Judiciary endorsed by the General Assembly at its fortieth session.

10. *Paragraph 4, as amended, was adopted.*

Paragraph 5

11. **Mr. O'Flaherty** suggested rewording the end of paragraph 5 to read: "and on the lack of possibilities for reliance on the principles of the Covenant in the judicial system".

12. **Mr. Amor** (Country Rapporteur) agreed with Mr. O'Flaherty. According to the Malagasy Constitution, duly ratified treaties took precedence over national laws, but Madagascar had two categories of laws — ordinary laws and organic laws, and human rights were governed by the latter. While the delegation had indicated that treaties, including in the area of human rights, took precedence over ordinary laws, it had not responded to the fundamental question concerning the status of the Covenant with respect to organic laws, creating the impression that the Covenant lay somewhere between the two categories, which could obviously have an impact on the degree of respect accorded to it.

13. *Paragraph 5, as amended, was adopted.*

Paragraph 6

14. **Mr. O'Flaherty** sought clarification of the concept of "linguistic concordance".

15. **Mr. Amor** (Country Rapporteur) explained that whereas the Malagasy version of the Constitution prohibited discrimination against all individuals, the versions in French and English (both also official languages of Madagascar) spoke only of discrimination against nationals. Consequently, the paragraph was calling for consistency among the three language versions to make it absolutely clear that discrimination against any individual under the jurisdiction of the State party was prohibited.

16. **Ms. Chanet** said that the paragraph should state explicitly that the Committee had taken note of the delegation's statement that article 8 of the Constitution in its French and English versions prohibited discrimination against nationals only, whereas the version in Malagasy prohibited discrimination against all individuals under the jurisdiction of the State party. The paragraph should stress that the information on the linguistic discordance had been provided by the delegation itself, since the Committee members did not read Malagasy, and it should call on the State party to make the texts match, in order to eliminate any ambiguity, and to prohibit any and all discrimination.

17. **Mr. Amor** (Country Rapporteur), agreeing with Ms. Chanet 's suggestion, asked her to provide a formulation in writing.

18. *Paragraph 6, as amended, was adopted.*

Paragraph 7

19. **Mr. O'Flaherty** suggested that the full title of the Paris Principles should be given — namely, the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (General Assembly resolution 48/134, annex). More than merely taking the Principles into account, the State party should be urged to resume the work of the National Human Rights Commission in conformity with the Principles.

20. **The Chairperson** asked whether the full title of the Paris Principles should be spelled out in a footnote or in the body of the text.

21. **Mr. O'Flaherty** said that he was happy to leave that determination to the Country Rapporteur.

22. **Mr. Amor** (Country Rapporteur) said that it would be appropriate to include the full title in the paragraph itself.

23. *Paragraph 7, as amended, was adopted.*

Paragraph 8

24. **Mr. Amor** (Country Rapporteur) pointed out that paragraph 8 was in square brackets, and that Mr. Glélé-Ahanhanzo had suggested an addition to it. Personally, he found the proposal acceptable, but some members might find it repetitive.

25. **Mr. Glélé-Ahanhanzo** said that the paragraph should also deal with the practice of abandonment of one child when twins were born. Since the paragraph was referring to the principle of equality between men and women, it would be appropriate also to bring in the principle of equality between the two twins. It was clear that because of the usages and customs in one part of the country, observance of that principle would necessitate education and training of the population.

26. **Mr. O'Flaherty** said that the recommendation to the State party, as currently formulated, could apply to any issue and therefore needed to be much more specifically focused on issues of equality between men and women. Possible wording would be "… strengthen its efforts in education and training with regard to issues of gender equality so as to help …". In any event, he felt that the paragraph should not precede paragraph 9, which "noted progress made in the area of equality between men and women". It seemed strange to express concern about equality in one paragraph and note progress in equality in the next. Perhaps the current paragraph 8 should be moved further down in the cluster of paragraphs dealing with gender-related issues.

27. **Ms. Majodina** felt that the recommendation did not quite capture the concern expressed in the first part of the paragraph. As the issue of abandonment of one twin was addressed in paragraph 16, she wondered whether it was advisable to repeat it. Finally, she suggested that the phrase "changing mentalities" should be replaced by "changing attitudes".

28. **The Chairperson** pointed out that the Spanish version of the paragraph did indeed say "*actitudes*".

29. **Mr. Amor** (Country Rapporteur), referring to his earlier comments on the proposed addition, explained that the current paragraph 8 had been intended to frame general issues of equality, while subsequent paragraphs would deal with more specific ones, such as employment (paragraph 9) or inheritance (paragraph 10). The matter of the treatment of twins was so important, and had been of such great concern to the Committee, that it had been necessary to give it a paragraph of its own, namely paragraph 16.

30. The wording might be improved by taking account of Mr. O'Flaherty's concerns about the paragraph's lack of specificity, and a decision on its place in the text could be taken later. With regard to Ms. Majodina's suggestion, he said that while "mentality" was closely related to "attitude", they were two different things. It was because one had a certain mentality that one adopted a certain attitude. Perhaps both terms could be included in the paragraph.

31. *Paragraph 8, as amended, was adopted on the understanding that its placement within the document would be decided subsequently.*

Paragraph 9

32. *Paragraph 9 was adopted.*

Paragraph 10

33. *Paragraph 10 was adopted.*

Paragraph 11

34. *Paragraph 11 was adopted.*

Paragraph 12

35. **Mr. Amor** (Country Rapporteur) suggested that "applied without reservation" in paragraph 12 should be amplified by " and throughout its territory".

36. *Paragraph 12, as amended, was adopted.*

Paragraph 13

37. *Paragraph 13 was adopted.*

Paragraph 14

38. **Mr. O'Flaherty** suggested deleting the words "thus causing women to resort to clandestine and illegal abortions, with the associated risks to their lives or health ". The lack of access to abortion did not automatically lead women to obtain abortions. He felt that the sentence should stop at "prohibits abortion even when the life of the mother may be in danger". With regard to contraception, he wondered why the Committee had not used the standard phraseology it had adopted on the issue

39. **Mr. Shearer** agreed with Mr. O'Flaherty. The Committee ran the risk of sending mixed messages if it did not use consistent phraseology. He recalled that the formulation in question had been adopted in all the Committee's observations on countries subsequent to (but not including) those on Poland.

40. **Ms. Chanet** said that she agreed with the proposal to use standard language on contraception, but could not agree with Mr. O'Flaherty concerning abortion. It was a simple truth that the prohibition of abortion in and of itself caused illegal and clandestine abortions. A compromise solution might be to say "causing women in many cases to seek ...". That would retain the unfailing causative link between prohibition and illegality. Poor women were in greater danger, since women who were well-off would seek an abortion that, while it might still be clandestine and illegal, would not entail a risk to life or health.

41. **Mr. Amor** (Country Rapporteur) said that Madagascar had recently launched awareness campaigns about contraception, which were shocking to many men and women. To date, the Government had been unable to overcome the resistance to changes in the traditional way of thinking. Abortions were sometimes performed openly and in good faith by elderly women without their being considered illegal. The proposal put forward by Ms. Chanet could clarify matters. He did not see any need to seek standard wording for the text, as the amended paragraph was clear as it stood.

42. **Mr. O'Flaherty** said that he could accept the amendment. On the matter of using agreed language, he urged the Committee to consider using such wording and requested the human right Secretariat to read out the relevant text from the previous year.

43. **Ms. Chanet** said that the standard wording encompassed both the expression of concern and the recommendation of the Committee.

44. **Mr. Gillibert** (Secretary of the Committee) said that the standard formulation on abortion could be found in the concluding observations for Honduras, which used the following wording to express the concern: "The Committee expresses its concern at the unduly restrictive legislation on abortion, particularly in cases where the life of the mother is endangered (article 6 of the Covenant)", while the recommendation read: "The State party should amend its legislation so as to help women avoid unwanted pregnancies and ensure that women need not resort to clandestine abortions, which could endanger their lives. The State party should also amend its legislation on abortion in order to bring it into line with the Covenant".

45. **Mr. Amor** (Country Rapporteur) said that he did not have any problem with the standard formulation, but would have liked to add some "local colour" by, for example, referring to the specific case of unwanted pregnancies in Madagascar.

46. Mr. O'Flaherty suggested adding the words "in the particular circumstances of the State party" and making reference to the issue of contraception, for greater specificity.

47. **Ms. Chanet** said that the standard formulation was the product of a compromise and that any additions would only divide the Committee.

48. **Mr. Amor** (Country Rapporteur) said that in spite of his personal aversion for standardization, the standard formulation should be adopted in order to avoid further arguments.

49. *Paragraph 14, as amended, was adopted.*

Paragraph 15

50. **Ms. Chanet** wondered whether it was appropriate for the Committee to welcome the fact that, in practice, the sentences imposed for cattle theft were automatically commuted to life imprisonment. The sentence should be revised to read that the Committee welcomed the fact that in practice death sentences — regardless of the offence involved — were automatically commuted to life imprisonment.

51. **Mr. Amor** (Country Rapporteur) said that the amendment was appropriate. He suggested deleting the word "life".

52. *Paragraph 15, as amended, was adopted.*

Paragraph 16

53. **Mr. O'Flaherty** said that he had some problems with both the expression of concern and the recommendation. The expression of concern led one to believe that whenever twins were born in the southeast, one died. He was certain that that was not the case. He therefore suggested adding the words "in many cases" to the sentence concerning the abandonment of one of the newborns. As for the recommendation, it was far too ambivalent and gentle, and the language concerning child protection was out of place. The issue involved an abomination which could be dealt with in a single sharp sentence. He therefore suggested deleting the first clause regarding the explanations provided and revising the text to say: "The Committee calls on the State party to take vigorous and appropriate measures to eradicate these practices without delay."

54. **The Chairperson** proposed the following wording: "The State party should take vigorous and appropriate measures to eradicate these practices without delay."

55. **Mr. Amor** (Country Rapporteur) said that the Malagasy delegation had first explained that the second-born twin could not live. After it had seen the reaction of Committee members, it said that there were social institutions, churches and others which took care of the children. It had also indicated that although the second child was abandoned, it was cared for by private or other institutions. The Committee had never been told that in some cases the twins were both kept. Therefore, the expression of concern was justified. Concerning the recommendation, it could indeed be made more robust.

56. **Mr. Glélé-Ahanhanzo** wondered whether paragraph 8 on the need for education might be linked to paragraph 16.

57. **Mr. Amor** (Country Rapporteur) said that the current paragraph should stand on its own and should not be combined with others. Paragraph 16 could be moved, however, as appropriate.

58. **Sir Nigel Rodley** welcomed the wording of the recommendation proposed by the Chairperson. The words "as soon as possible" should also be deleted, as there was no need to imply that it was a gradual process, and replaced by "at once" to make the recommendation stronger.

59. **Mr. Amor** (Country Rapporteur) agreed that the recommendation could be made stronger as suggested. He would revise the recommendation to make it as robust as possible and to convey that the State party was responsible for taking the necessary legal and practical measures to eradicate practices which affected the rights of the child.

60. **Ms. Chanet** said that her concern was the converse of Mr. O'Flaherty's. She could not be certain that the practice of killing one of the twin children had ended entirely. On seeing the Committee's reaction to the possibility that they were killed, the Malagasy delegation had informed Committee members that the twin children were not killed but abandoned. Furthermore, the delegation had never replied that in some cases, both children were kept.

61. **Mr. Khalil** said that he had put that very question to representatives of NGOs, which had clearly indicated that the practice of abandoning the second child was widespread.

62. **Mr. O'Flaherty** said that he withdrew his concern on the expression of concern.

63. *Paragraph 16, as amended, was adopted.*

Paragraph 17

64. **Mr. Amor** (Country Rapporteur) welcomed the amendments to the paragraph proposed by Sir Nigel.

65. **Sir Nigel Rodley** said that he had had some misgivings about putting forward his proposal, as the issue had not been addressed in the dialogue with the State party. Although it was included in the list of issues, the State party had not responded. Had it done so, the Committee would be in a better position to

comment on it. He also had misgivings, however, about not making any comment . He had therefore focused on the fact that the Committee had not received the necessary information from the State party. Rather than expressing conce rn about the allegations the Committee was asking the State party to provide it with that information , and to take specific measures to put a stop to the practice. He doubted that the State party was among the rare ones in that part of the world where ther e was not a substantial problem of torture.

66. **Mr. Khalil** said that he had been among the Committee members to put the question raised in the current paragraph to the delegation. He fully agreed with the proposed paragraph.

67. *Paragraph 17, as amended, was adopted.*

Paragraph 18

68. **Ms. Chanet** said that she had asked the Mal agasy delegation why torture had not been identified as such in its Penal Code, which characterized it only as an aggravating circumstance. The Country Rapporteur had therefore clearl y reflected the discussion in the paragraph.

69. *Paragraph 18 was adopted.*

Paragraph 19

70. *Paragraph 19 was adopted.*

Paragraph 20

71. **Mr. O 'Flaherty** said that the current wording took a certain position on domestic labour by children, in that it ackn owledged that some domestic labour of children might not be in violation of article 8. He suggested that the first sentence should be revised to read: "The Committee takes note of the information that children are reportedly often employed, in violation of article 8 and article 24 of the Covenant, as domestic workers ... " . He had no objections to the paragraph. With his proposed amendment, he simply wished to avoid implying that child labour in a domestic setting could be compatible with articles 8 and 24.

72. **Ms. Wedgwood** suggested deleting the words "reportedly" and "sometimes" to avoid appearing too diffident.

73. **Mr. Amor** (Country Rapporteur) agreed with the suggestion to make reference to article 24.

74. **Mr. Shearer** said that the paragraph should say that the children were employed as domestic workers "under conditions that amounted to slavery" rather than "in violation of article 8 of the Covenant" for the sake of readers who might not be as familiar with the provisions of the Covenant as Committee mem bers. The concluding observations did have a wider readership. There was no need to be too coy about mentioning slavery in connection with domestic child labour.

75. **Mr. Amor** (Country Rapporteur) suggested inserting the word "often" between "conditions tha t" and "amounted to slavery" in the proposed amended paragraph, as it was not certain that such domestic work amounted to slavery in every case.

76. **Ms. Chanet** said that if a child were employed as an unpaid domestic worker in someone else 's family, it could only be slavery. Children were commonly used as domestic servants and treated as possessions of the family who kept them. She therefore failed to understand which cases could be excluded from article 8.

77. **Mr. Amor** (Country Rapporteur) said that the relevant sentence regarding children who were not paid for their labour could be reworded to confirm that they were indeed victims of slavery.

78. **Ms. Wedgwood** wondered whether the phrase "or forced servitude" should be added after the words "often amounted to slavery" to soften the sentence somewhat. She said that within the context of Africa, where Africans felt themselves to have been the victims of the slave trade, the use of the word "slavery" might be too blunt.

79. **Ms. Majodina** said that the historical precedent of slavery in Africa should not stand in the way of making the recommendation as strong as it currently stood.

80. **The Chairman** took it that the Committee wished to approve the paragraph along the lines suggested by Mr. O 'Flaherty and Mr. Sheare r, pending its redrafting by the Country Rapporteur.

81. *It was so decided.*

Paragraph 21

82. **The Chairman** took it that the Committee wished to adopt paragraph 21, provided that the necessary grammatical corrections were made to the English text to reflect the reported speech in the French and Spanish versions.

83. *It was so decided.*

Paragraph 22

84. *Paragraph 22 was adopted.*

Paragraph 23

85. **Ms. Chanet** said that she fully agreed with the concern expressed in the paragraph about the dysfunctions in the State party's judicial system and the court cases which had been lost or mismanaged. However, as many countries in Africa and elsewhere did not have a computerized system, she did not agree with the concern that a computerized system for registering cases was available only in the capital and felt that that phrase should be deleted.

86. **Mr. Bhagwati** said that he fully agreed with the observation made in paragraph 23 about the prevailing structure of the judicial system, which was completely justified.

87. **Mr. Amor** (Country Rapporteur) said that the reference to the computerized system could be deleted, as it added little to the text.

88. *Paragraph 23, as amended, was adopted.*

Paragraph 24

89. *Paragraph 24 was adopted.*

Paragraph 25

90. **Ms. Chanet** said that the affirmation that "No mechanism is in place to protect against the arbitrary decisions of the Council" was too strong. The delegation had not said that decisions, appointments or disciplinary sanctions by the Supreme Council of the Judiciary could never be contested before an administrative tribunal. She suggested deleting that sentence and replacing it with one that said that there were no guarantees to exclude any future interference by the executive branch in the affairs of the judiciary, or words to that effect.

91. **Mr. Amor** (Country Rapporteur) agreed that the statement was too strong, especially since the delegation had acknowledged the existence of administrative remedies. Nevertheless, the concern about executive interference in judicial affairs should be maintained.

92. *Paragraph 25, as amended, was adopted.*

Paragraphs 26 and 27

93. **Mr. Shearer** wondered whether the Committee's statements concerning customary systems of justice would be consistent with what the Committee was going to say in its general comment No. 32. He felt that where the *Dina* dealt with other matters such as property and marriage, there should be a fair-trial requirement. However, he was not sure whether the Committee was saying that those matters did not have to comply with article 14, paragraph 1, or whether it was concerned only with those *Dina* that meted out criminal justice, in which case it would be concerned about the applicability of all of article 14. The text could be more nuanced to show that the Committee was concerned with the administration of justice in customary courts that handled criminal matters but not in others that dealt with religious, community or family issues.

94. **Ms. Wedgwood** felt that the reference was broad enough that there was no pre-commitment as to which section of article 14 applied. With regard to the general comment, the applicable portions of article 14 could not be bypassed by merely calling something "customary". For example, military tribunals were considered "customary" in some places, but they could not be allowed to evade the Covenant or held to a different standard of procedural fairness and due process simply because they were referred to as "customary".

95. **Mr. Bhagwati** said the text was too broad and that it put customary and common law courts on the same footing, thereby requiring all jurisdictions to comply with all of article 14. The effect of article 14 should be whittled down for customary courts.

96. **Mr. Kälin** said that while customary courts were a fact of life, the Committee did not have to concern itself with them if they were not linked to the traditional system of the State. It would be naïve to insist that those courts fully comply with article 14, because they were pre-modern dispute-settlement

mechanisms whose operating logic had nothing to do with article 14. He suggested that the State party should be obliged to ensure that in all cases that fell under article 14, its judiciary complied fully; if the *Dina* courts did not meet those standards, they should not handle criminal cases.

97. **Ms. Motoc** agreed that customary justice was a pre-modern system. However, in many areas of Africa and in aboriginal communities, justice was still administered largely by customary institutions. Although customary law did not fit the standard for article 14, when customary courts were accepted as valid, maybe they could be considered a second source of remedy within the State system.

98. **The Chairperson** suggested that the Committee should focus on the report of Madagascar and not engage in a broader discussion about the status of customary courts.

99. **Mr. O 'Flaherty**, agreeing with Mr. Kälin, suggested including the following sentence in the recommendation: "Where the *Dina* courts failed to meet the requirements of article 14, any binding findings or judgements and statements should not be recognized by the State party".

100. **Ms. Wedgwood** agreed with the Chairperson that the Committee should not be overly ambitious so as not to prejudge its general comment. However, she did not share the view that customary courts should be held to the standards of article 14 only if the State recognized their decisions. In many small and isolated communities, those decisions were enforced without State recognition. Yet, the State had an obligation in such cases to interpose itself and enforce the Covenant. The Committee should not relax the demands that it would place on any subnational unit that exercised national power simply because it was embarrassed to confront serious human rights violations, particularly against women and children.

101. **Ms. Chanet** acknowledged that customary courts existed and that their standards were not always consistent with article 14, which meant that the second part of paragraph 26 made no sense. In the case of paragraph 27, since the State party had indicated that the *Dina* handled minor offences only and that their decisions were subject to judicial supervision, the first part of paragraph 26 could be retained and merged with paragraph 27 to form a new paragraph. The Committee could simply insist that the State party should not return to past practice, but rather ensure that the *Dina* intervened in minor cases only and were indeed subject to judicial supervision.

102. **Mr. Shearer** suggested retaining only the first part of the concern in paragraph 26 and then merging paragraphs 26 and 27 as proposed by Ms. Chanet.

103. **Mr. Amor** (Country Rapporteur) said that the Committee had discussed the *Dina* issue at length; that there had been cases of summary executions arising from the decisions of the *Dina*; that the delegation had said that the *Dina* would only deal with minor offences in future and that they were subject to judicial supervision. Therefore, he proposed combining paragraphs 26 and 27 to produce the following wording: "The Committee is concerned by the existence of a customary system of administration of justice (*Dina*) that is not always able to ensure fair trials. It regrets that summary executions have been carried out pursuant to decisions handed down by the *Dina*. It takes note of the statement by the State party according to which the *Dina* can now rule only on minor offences and under judicial supervision (articles 6 and 14)". He then proposed the following language for the recommendation: "The State party should take the necessary measures to ensure fair justice when it is exercised by the *Dina* and under the authority of State jurisdictions. The State party is also invited to ensure that summary executions based on decisions of the *Dina* never happen again and that all defendants can benefit from all the guarantees expressed in the Covenant".

104. *Paragraphs 26 and 27, as amended, were adopted.*

Paragraph 28

105. *Paragraph 28 was adopted.*

Paragraph 29

106. *Paragraph 29 was adopted, pending the suggestions by the Country Rapporteur concerning the additional information to be provided by the State party, and on the proposed date of the next report.*

107. **Mr. Amor** (Country Rapporteur) said that the date of the next report had to be proposed by the Committee and approved in a public session. With regard to the priorities to be addressed by the State party, they should be limited to a small number of

practical issues that could be achieved within a reasonable time, such as revising the National Human Rights Commission (para. 7) and the situation of the prisoner being held since 1978 pending appeal and of other detainees whose criminal case files had been lost (para. 24). There were obviously other very important issues, such as polygamy, the situation of twins and women's right to inherit property, but he doubted whether the State party could accomplish all those in one or two years.

108. *The draft provisional concluding observations of the Human Rights Committee on the third periodic report of Madagascar as a whole, as amended, were adopted.*

Concluding observations of the Human Rights Committee on the fifth periodic report of Chile (CCPR/C/CHL/CO/5/CRP.1)

109. **Mr. Johnson** and **Sir Nigel Rodley** (Country Rapporteurs) introduced the draft concluding observations, for which they had jointly taken over responsibility from a previous country rapporteur. The English version would be commented on by Sir Nigel, and the Spanish version by Mr. Johnson.

Paragraph 1

110. *Paragraph 1 was adopted.*

A. Introduction

Paragraph 2

111. **Mr. Kälin** suggested that, in the last sentence, the Committee should welcome the quality of the answers provided by the State party rather than its willingness to answer them, which went without saying.

112. *Paragraph 2, as amended and with a minor editorial change, was adopted.*

B. Positive aspects

Paragraph 3

113. **Sir Nigel Rodley** (Country Rapporteur) said that, in paragraph 3 (c), rather than simply welcoming the reform of the Code of Criminal Procedure, the Committee should say specifically what it liked in the reform. One aspect of the reform had been to introduce a common-law element of adversarial proceedings to replace a civil-law inquisitorial system. It would be inappropriate, however, for the Committee to be advocating a particular system — although personally he thought that it was probably a good system in the context of Chile. He therefore proposed adding, at the end of the subparagraph, the clause: ", which now separates the functions of investigation, prosecution and adjudication".

114. **Ms. Chanet** said that she would prefer simply stating that the reform facilitated the exercise of the right of defence, without advocating the system that had been established. She disagreed with Sir Nigel that the common-law separation of preliminary and pre-trial investigations ensured equality of arms, and believed that the examining-magistrate system under civil law — where the same presiding magistrate investigated and brought charges — provided far greater guarantees. She would therefore prefer welcoming the reform because it guaranteed the independence of presiding judges and promoted defence rights. That formulation ought to satisfy Sir Nigel, because the separation of functions that he favoured served to enhance defence rights.

115. **Sir Nigel Rodley** (Country Rapporteur) observed that, by any standard, be it common law or civil law, the former system, unique to Chile, of having one individual act as investigator, prosecutor, judge and sentencer needed to be done away with; it had been changed, and that should be welcomed.

116. **Ms. Chanet** observed that the examining-magistrate system, inquisitorial at the outset, had actually evolved over time and itself become adversarial. She would object to a reference to investigation, but could accept adding the clause ", which now separates the functions of prosecution and adjudication".

117. **Sir Nigel Rodley** (Country Rapporteur) said that he could accept that.

118. *It was so decided.*

119. **Mr. O'Flaherty**, referring to paragraph 3 (e), said that, since four other examples of legislative advances had been cited in paragraph 3 and no particular reason had been given for welcoming the adoption of the Religious Act, he thought subparagraph (e) should be deleted.

120. *It was so decided.*

121. *Paragraph 3, as amended, was adopted.*

Paragraph 4

122. *Paragraph 4 was adopted .*

C. Principal areas of concern and recommendations

Paragraph 5

123. **Sir Nigel Rodley** (Country Rapporteur) said that in the recommendation section of paragraph 5, the phrase "crimes against humanity" should be replaced by the phrase "grave human rights violations", because the Covenant was not concerned specifically with crimes against humanity.

124. *It was so decided .*

125. *Paragraph 5, as amended, was adopted .*

Paragraph 6

126. **Mr. Kälin** observed that the paragraph did not fully reflect the discussion with the delegation: the focus had been on establishing a national human rights institution and not specifically the post of national defender of human rights — which, in any case, it would not be up to the Committee to advocate as being the best for Chile. He proposed amending paragraph 6 to read: "While acknowledging the State party's efforts in this regard, the Committee is concerned that it still has not established a national human rights institution (article 2 of the Covenant)". Then, in the recommendation section, he proposed that the text should read: "The State party should establish a national human rights institution as soon as possible, …".

127. *Paragraph 6, as amended, was adopted .*

Paragraph 7

128. **Mr. Kälin** proposed that the first sentence should be amended in order to bring it more into line with language used at previous sessions in several other concluding observations, such as those relating to Canada, the United States of America or Norway. It would then read: "The Committee is concerned about the potentially overbroad reach of the definitions of terrorism contained in Counter-Terrorism Act No. 18.314. The Committee is also concerned that this definition has resulted in charges of terrorism being brought against members of the Mapuche community in connection with violent acts of protest …". The definition in question was not ambiguous but too wide, and the acts of protest had actually occurred and been violent, but they should not have been labelled terrorist .

129. Again, to bring the language into line with that used for Canada, he proposed amending the first sentence of the recommendation section of paragraph 7 to read: "The State party should amend its counter-terrorism legislation so that it is limited to crimes that deserve to attract the grave consequences associated with terrorism, and ensure that the procedural guarantees established in the Covenant are fully respected". The second sentence should be deleted, because it represented circular reasoning.

130. **Sir Nigel Rodley** (Country Rapporteur) and **Mr. Johnson** (Country Rapporteur) concurred.

131. *It was so decided .*

132. **The Chairperson**, speaking in his personal capacity, and recalling that the condemnation of the Mapuche on charges of terrorism had occurred over 20 years earlier before the return of democracy to Chile, proposed that therefore, in the new second sentence of paragraph 7, the verb "has resulted" should be changed to "resulted".

133. *It was so decided .*

134. **Ms. Chanet** proposed giving the last sentence a broader scope by removing the reference to the Mapuche, so that it would read: "It should also stop bringing charges of terrorism in connection with social demands". The same weapon could conceivably be used in other circumstances against trade unions or other minorities.

135. **Ms. Wedgwood** said that she did not believe it was the Committee's business to tell countries what they should call a crime, so long as the sanctions imposed were proportionate and did not become an excuse for an illicit practice.

136. Also it was a premise of the modern approach to terrorism and to armed conflict that a good cause was no excuse for the use of illicit methods. Yet the last sentence of the recommendation section, indicating that a certain kind of charge should never be brought in relation to a certain kind of cause, seemed to imply a connection between the purpose of an action and the means used to achieve it, and she thought the sentence should be deleted.

137. **Sir Nigel Rodley** (Country Rapporteur) said, with regard to the first issue raised by Ms. Wedgwood, that it was not a question just of naming a crime but also of the procedural guarantees available when a charge was brought. He would therefore keep the first sentence of the recommendation section as it st ood.

138. **The Chairperson** , speaking in his personal capacity, said that, once the reference to the Mapuche was removed, the last sentence of the recommendation section would make a valid point and should be retained.

139. **Mr. Kälin** said that a similar poin t had come up in relation to Canada and the language used there had been: "The State party should adopt a more precise definition of terrorist offences so that individuals will not be targeted on political, religious or ideological grounds in connection wi th measures of prevention". That language could be used to replace the last sentence of the recommendation section of paragraph 7.

140. *It was so decided* .

141. *Paragraph 7, as amended and with a minor editorial change in the Spanish version, was adopted* .

Paragraph 8

142. **Sir Nigel Rodley** (Country Rapporteur) said that in the recommendation section of paragraph 8 the words " **abortion laws** " in the first sentence should be changed to the word " **legislation** ", as in the Spanish text, for the sake of logic.

143. *It was so decided* .

144. **Ms. Wedgwood** proposed making the text conform to the formulation used in the case of Honduras, which would mean deleting the tendentious second sentence regretting that the Government had no plans to legislate in the area of abortio n.

145. **The Chairperson** , supported by **Mr. Johnson** (Country Rapporteur), said that the delegation had said specifically that the President had decided not to adopt any legislation on abortion. The Committee could not gloss over such a decision.

146. **Ms. Wed gwood** said that if the sentence was retained, it should be shortened to a simple statement of fact that the Chilean Government had reported that it had no plans to legislate in that area.

147. **Mr. O'Flaherty** said it was not the Committee's practice to make hanging statements of fact. The sentence should either be deleted or the Committee should regret the fact.

148. **Sir Nigel Rodley** (Country Rapporteur), supported by **Mr. Johnson** (Country Rapporteur), said that it was appropriate for the Committee to take specific realities into account and appropriate to regret them. Otherwise, it might find that States parties had subsequently rigidified their position. He would keep the second sentence of paragraph 8 as it stood.

149. **Ms. Chanet** said that for the moment th e Chilean Government had no legislation plans, but that could change. Indeed, recent comments by President Bachelet had indicated that the Government would soon be tackling the abortion issue. The Committee should retain its timely compromise formulation i n the second sentence.

150. *It was so decided* .

151. *Paragraph 8, as amended, was adopted* .

Paragraph 9

152. **Mr. O'Flaherty** said he believed that the recommendation section of paragraph 9 went too far and was inconsistent with article 25 of the Covenant. The suggestion that the State party might bar the perpetrators of serious human rights violations from holding public office, if it was intended to be a prohibition in perpetuity, might go against the Committee's own approach in other contexts. He proposed deleting the clause "for example barring the perpetrators of serious human rights violations from holding public office" in the first sentence of the recommendation section. Also, in the second sentence, the word "alleged" should be inserted before the wor d "perpetrators" because prosecutors did not identify perpetrators.

153. **Ms. Wedgwood** asked Mr. O'Flaherty to reconsider his position on the first point. In the war crimes community, too often the presumption that indictment, conviction and incarceration w ere the only course of action had — as in Bosnia and Herzegovina — meant that most war criminals were either not charged or, if charged, not tried, given the limited capacity to do so. The Committee was merely giving an example of other possible action. In many circumstances, that form of lustration had proven very

important in restoring citizens' ability to function under a formerly dictatorial government. It would be an unusual reticence on the part of the Committee not to mention the possibility.

154. **Mr. O'Flaherty** said that his concern was that the Committee had not sufficiently discussed how lustration as a component of transitional justice might or might not in its various manifestations be compatible with the Covenant, and whether it took inadequate account of human rights. For precisely the reasons given by Ms. Wedgwood, he had asked that the example should be deleted. An issue should not be dealt with in the rush to adopt the concluding observations in a way that might later, once the Committee refl ected on it, pose a problem.

155. **Sir Nigel Rodley** (Country Rapporteur) said that the idea of citing examples had been to indicate alternatives to ascribing criminality. Both Mr. O'Flaherty and Ms. Wedgwood had a point, but without the time to discuss the pros and cons, he would — although he himself thought it might be good to mention it — follow the course suggested by Mr. O'Flaherty and delete the phrase "for example … public office", and insert the word "criminal" before the word "responsibility" in the second line of that sentence.

156. **The Chairperson** said that the Committee would have to resume the discussion of paragraph 9 and the remaining paragraphs of the draft concluding observations on Chile at a subsequent meeting.

The meeting rose at 6.05 p.m.