

HUMAN RIGHTS COMMITTEE

85th session (Geneva, 17 October to 3 November 2005)

During its 85th session, the Human Rights Committee (the Committee or the HRC), which monitors the implementation by State parties of the International Covenant on Civil and Political Rights (the Covenant), considered reports submitted by Brazil, Canada, Italy and Paraguay.

Overview of the Committee session

Four countries were scheduled for examination before the Committee, which was chaired by Ms. Christine Chanet. The Committee also discussed in closed meetings the country report task forces on the United States of America (USA), Saint Vincent and the Grenadines, the Democratic Republic of Congo, Norway, and the Hong Kong Special Administrative Region of China (Hong Kong). In addition, the Committee deliberated on the revised General Comment on Article 14 of the Covenant. Also presenting their reports were the Special Rapporteur on follow-up on Concluding Observations, Mr. Rafael Rivas Posada, and the Special Rapporteur on follow-up to views, Mr. Nisuke Ando. On the opening day of the session, a briefing by non-governmental organisations (NGOs) and specialised agencies took place.

For the most part, all of the Committee members were present in every meeting. A significant amount of time was consumed in the presentation of the written replies by some State delegations. The Committee gave the State parties a week deadline to provide written answers to questions which could not be answered due to time constraints. Italy's written replies, submitted in English, could not be translated into Spanish in time, thereby resulting in non-English speaking Committee members being unable to adequately respond to Italy's replies. A similar situation occurred with Paraguay's written replies, which were only available in Spanish. Apart from a minor incident involving calling Italy to order, the relationship between the delegations and the Committee was a professional and friendly one. The Committee's language was diplomatic, sometimes resulting in failure to meaningfully convey to the State party its severe violations of the Covenant

The main recurring themes that were discussed throughout the session were the implementation of the Covenant, the rights of indigenous people, gender equality, the rights of asylum-seekers, problems in the judicial system, the rights of people deprived of their liberty, and police violence. Certain Committee members focused on particular issues: Ms. Ruth Wedgwood on indigenous people; Mr. Ahmed Tawfik Khalil on gender equality and women's rights; Mr. Hipólito Solari Yrigoyen on torture; Sir Nigel Rodley on police violence, the prosecution of perpetrators of human rights, detention centres, and access to legal counsel; Mr. Michael O'Flaherty on indigenous people and minorities; Mr. Walter Kälin on respect of Covenant guarantees and anti-terrorism laws; Mr. Edwin Johnson Lopez on indigenous people, the rights of people deprived of their liberty, and children's rights; and Mr. Maurice Glèlè-Ahanhanzo on Roma people. The Committee members who did not raise many questions were Ms. Chanet, Mr. Ando, and Mr. Alfredo Castillero Hoyos.

Many NGOs were present during the session. A large number of Canadian NGOs attended the meetings on Canada necessitating a change to a larger venue for Canada's session. In contrast, only one NGO from Paraguay and a few NGOs from Italy were present. Among the NGOs and international bodies attending the session were the United Nations High Commissioner for Refugees (UNHCR), International Commission of Jurists (ICJ), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Amnesty International, Geneva for Human Rights, Quaker United Nations Office, and Conscience and Peace Tax International.

Reports of States

Brazil (2nd periodic report¹)

Overview of the country session

The Committee considered Brazil's 2nd periodic report on 26 and 27 October 2005. The Brazilian delegation was led by Mr. Mário Mamede, Undersecretary for Human Rights, and included representatives of: the Permanent Mission of Brazil in Geneva, the Special Secretary for the Promotion of Racial Equality of the Presidency of the

¹ CCPR/C/BRA/2004/2.

Republic of Brazil, the General Prosecutor's Office, the Ministry of Education, the Special Secretariat for Human Rights, the Ministry of Culture, the National Foundation for the Indigenous Peoples (FUNAI), the Labour Attorney's Office, the Ministry of Justice, the Ministry of Foreign Relations, and the Ministry of Labour. Brazil's delegation was large, high-level, and well-represented by women. Only one delegate was Afro-Brazilian, and Ms. Wedgwood pointed out the lack of members from the indigenous population in the delegation. Members of the Committee congratulated the delegation for being well-prepared, open-minded, and detailed in their oral and written responses. During the session, the delegation effectively managed its time by briefly addressing the answers to each of the Committee's questions, thus leaving enough time for Committee members to pose questions orally and for it to answer them. In her concluding remarks, Ms. Chanet applauded the State party's clear improvement compared to when it presented its initial report to the Committee in 1995. Nonetheless, she expressed criticism that although numerous plans and programs existed, some of the Covenant's provisions were not being genuinely applied.

The major issues raised with Brazil included: the right to self-determination (Article 1 of the Covenant); the right to a legal remedy for the violation of Covenant rights (Article 2); the principles of non-discrimination, gender equality, and protection of national minorities (Articles 2, 3, 26, and 27); the right to life and prohibition of torture and cruel, inhuman, or degrading treatment (Articles 6 and 7); the prohibition of slavery or forced or compulsory labour (Article 8); liberty and security of the person and treatment of prisoners (Articles 9 and 10); and the protection of women and children (Articles 23 and 24).

Themes and issues discussed

In his introductory remarks, the head of the delegation elaborated that the report focused on the State party's responses to the Committee's previous recommendations. He stressed that the report was reviewed by an independent consultant, had been made available to civil society, and was subsequently edited by taking civil society's comments into consideration. He remarked that the Government was aware of the challenges it faced and identified Brazil's federal system as the greatest challenge to promoting human rights in the country. He further relayed that the delegation had come to Geneva with a desire for transparency and would welcome criticism which would assist the State party in ensuring full respect of the Covenant.

Mr. Johnson Lopez asked which practical forms of consultation existed and were used by the Government in order to understand **the indigenous communities' requirements**. The delegation responded that there was a State policy of consultation with indigenous communities and that the Government held national and regional conferences at which indigenous people were heard.

Posing several questions in regard to the State party's **judicial system**, Mr. O'Flaherty expressed concern about its capacity and delay problems as well as the low representation of women, indigenous people, and Afro-Brazilians in the judicial system. Among other issues, he mentioned the disparity between the homicide rates within the Afro-Brazilian community and the white Brazilian community and the proposed 50% **budget cut of the Human Rights Secretariat**. He further applauded Brazil's program to combat **homophobia**, describing it as an exemplary program and congratulating Brazil for its leadership on this issue. However, he also pointed out that the incidence of homophobia in the northern part of the country was much greater than in other parts, and that perhaps the State party needed to focus more on that area. In response, the delegation said that the State party was taking measures to increase the number of judges and had also adopted a law to increase the number of chambers. The Government had set up a joint Congressional body in order to increase access to justice and to speed up the judicial process. It furthermore was taking measures to criminalise unjustifiable delays and had developed a program on promoting judges. In regard to his question on violence within the Afro-Brazilian community, the delegation mentioned several programs the Government was pursuing in order to combat this phenomenon. The delegation also said that the budgetary situation was not desirable, but because of globalisation, the Government had to make tax and economic adjustments, which had caused the proposed budgetary cut of the Human Rights Secretariat. In regard to homophobia, the delegation noted that local authorities, particularly in the north, were being enlightened on the Government's rejection of homophobic behaviour.

Mr. Tawfik Khalil regretted the lack of data on **violence against women** and was surprised that not enough resources were devoted to this issue. He welcomed the draft bill on domestic violence, conveying his hope that it would be adopted. In regard to **gender equality**, he observed that overall there was a great deal of progress since Brazil's initial report in 1995. However, he also noted that simply establishing institutions and organising

conferences did not go far enough in reality. In response, the delegation stated that the Secretariat for Women was playing an important role in ensuring gender mainstreaming in the ministries, and that public officials were being trained in gender equality. Mr. Glèlè-Ahanhanzo noted that women in Brazil were sometimes **sterilised** to obtain a job and/or to maintain a demographic balance and demanded information on the scope of this problem and the steps the Government was taking to fight it. He also asked about the lack of information in the report on the **Roma and Gypsy community** in Brazil (including their birth registration problems), and questioned why they felt marginalised in such a diverse country. The delegation responded that there was no state policy of sterilisation with a view to limiting the population, and that sterilisation was in fact outlawed. It acknowledged that forced sterilisations occurred from time to time, but stressed that public prosecutors took severe measures against this practice. The delegation also stated that Gypsies and Roma had birth registration problems because most of them did not have a fixed abode and noted that discussions were underway on developing a program for them.

Mr. Wieruszewski noted that the answers to the list of issues did not sufficiently address the disproportionate rate of **infant mortality among Afro-Brazilian children**, and wanted to know what measures had been taken to reduce the **high maternal mortality rates**, particularly in rural areas and among those with low literacy levels. While he was impressed in the report by the number of programs that existed, they seemed to have only a small effect in reality. The delegation acknowledged the high mortality rate among Afro-Brazilian children and stated that a National Plan in for this matter had been set up.

Sir Rodley requested more information on implementation of the **law on the federalisation of human rights crimes**, Decree 2002. His other comments focused on allegations that the federal police had challenged this order and on whether federalisation or state-level approaches were preferable on issues of human rights. The delegation described the work of the Ombudsperson for police officers, whose duty was to protect those who launched complaints. It acknowledged that some problems could exist because the police sometimes participated in violence, but stated that the Government was severe in cracking down on this problem. The delegation also stressed that the State party was trying to develop a national program to protect human rights defenders, and that such schemes were being developed in the three states where the rate of violence was particularly high.

While recognizing the difficulties in being a federation, Ms. Wedgwood voiced dismay over the absence of an **immediate federal presence in each state** and argued that human rights compliance could not be left to the individual states. She further stated that the lack of data on police violence and domestic violence indicated a lack of control, and characterised Brazil's situation as almost anarchic federalism, while at the same time also saluting the progress Brazil had made. She said that there needed to be a **federal independent investigation of police violence**, and that there also needed to be better witness protection. Overall, she argued that Brazil's federal system was floating atop the individual states, and that there needed to be a real insertion of federal authority into local affairs. In response, the delegation said that the Public Ministry had oversight over police activities and had launched an investigation into police violence. It argued that it was unfair to say that there were no public prosecutors present in the states, as there existed a Public Ministry in each state and the federal Public Ministry also had delegates in every state. It mentioned that a national statistics system for criminal cases had been developed and that tremendous federal efforts were being made to develop a police oversight system.

Mr. Johnson Lopez was concerned about the **arbitrary extension of prison sentences** and asked about improvement of complaints mechanisms for prisoners who were victims of violence. The delegation answered that in cases of prolonged arbitrary detention, prisoners could go to the judicial authorities. It acknowledged that there were serious problems in the prison system in terms of conditions and capacity, and that some specific actions had been taken in this regard. Mr. Wieruszewski stated that he was disappointed by the Constitutional reform, which still provided for **military courts**, and argued that this practice went against the spirit of Article 14 of the Covenant.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

In its Concluding Observations, the Committee noted that while the report provided information on various programs and plans to promote human rights, there was not sufficient information on specific data that would help the Committee evaluate the practical enjoyment of human rights in the State. Some of the issues raised in the Concluding Observations were: the slow demarcation of indigenous lands as well as the eviction of indigenous people from their lands; the failure of the judiciary in some states to act against human rights

violations; the proposed significant budget cuts of the Human Rights Secretariat; and the lack of participation of women, Afro-Brazilians, and indigenous peoples in political, judicial, public, and other sectors of the State party.

Brazil appeared before the CRC in 2004 which identified Brazil's federal system as a challenge to the promotion of human rights in the country. Other similar concerns between the HRC and the CRC included: discrimination against Afro-Brazilians; problems with the State party's system of birth registration; and street children. In contrast to the HRC, the CRC encouraged the State party to establish a national human rights institution. In 2004, Brazil appeared before the Committee on the Elimination of Racial Discrimination (CERD), which expressed concerns shared by HRC as covering: inequalities affecting black communities and indigenous people; acts of aggression against indigenous peoples; and birth registration problems. The CESCR examined Brazil in 2003, when it conveyed similar concerns of the HRC as including: persistent and extreme inequalities; discrimination against Afro-Brazilians; forced labour; maternal mortality; trafficking; and the rights of indigenous peoples.

NGO concerns

No Brazilian NGOs were present at the Committee's NGO session. However, there was an informal meeting between NGOs and the Brazilian delegation at the Permanent Mission of Brazil in Geneva, which gave NGOs the opportunity to address their concerns directly to the delegation. The meeting was mainly held in Portuguese, with one member of the delegation translating parts of it into English for the non-Portuguese speaking participants. The three main shadow reports available consisted of: a brief by Amnesty International; a joint report by the OMCT, the Yves de Roussan Defense Center for Children and Adolescents (CEDECA/BA), the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), and the Inter-American Foundation for the Defense of Human Rights (FIDDH); and a brief by the Center for Reproductive Rights (CRR). Amnesty's concerns included: excessive use of force; use of torture; cruel, inhuman, and degrading prison conditions; harassment of those fighting for their right to land; and harassment of human rights defenders. The joint NGO report shared most of Amnesty's concerns, but also addressed issues of violence against women, child commercial exploitation, and the detention of children. CRR's main concerns included: high maternal mortality rates, particularly in rural and poor areas as well as among minorities; the criminalisation of abortion; violence against women, including domestic violence and trafficking; discrimination against Afro-Brazilians, indigenous people, and minority groups; and income inequality. Overall, the Committee addressed most of the NGO concerns, except for the criminalisation of abortion, which was a major concern of the CRR.

Canada (5th periodic report²)

Overview of the country session

The Committee considered Canada's 5th periodic report on 17 and 18 October 2005. The Canadian delegation was led by Mr. Alan Kessel, Legal Advisor at the Department of Foreign Affairs, and included representatives of: Canadian Heritage, Citizenship and Immigration Canada, the Department of Justice, Justice Canada, Human Resources and Skills Development Canada, Indian and Northern Affairs, the Permanent Mission of Canada to the United Nations (UN) Office at Geneva, Public Safety and Emergency Preparedness Canada, the Ministry of the Attorney General, and the Ministry of International Relations (Québec). Canada's delegation was large, high-level, and well-represented by women. There was much praise from most Committee members, including on the delegation's competency (e.g. with particular welcome for the presence of representatives of the provinces), the seriousness of the exchange, the participation of NGOs in drafting of the report, and the high quality and factual underpinning of the State party's report. Several Committee members referred to Canada as being a model for other countries to follow. Sir Rodley said, furthermore, that Canada played an important role in the advancement of human rights. At the end of the session, the head of the delegation opined that many of the Committee members' oral questions were related to economic, social, and cultural rights, and that this pattern was a worrying phenomenon in that Canada had already given a more extensive response on these issues to the other, appropriate committees. While acknowledging that duplication between the committees may occur, the Chairperson argued that in contrast to other committees, this Committee's questions were raised in a legally-based manner.

² CCPR/C/CAN/2004/5.

The major issues raised with Canada included: the right to self-determination (Article 1 of the Covenant); requests of interim measures from the Committee (Article 2); counter-terrorism measures and respect of Covenant guarantees (Articles 7, 9, and 13); the prohibition of discrimination, gender equality, and equality in and before the law (Articles 2, 3, and 26); the right to life and the prohibition of torture and cruel, inhuman, or degrading treatment (Articles 6 and 7); liberty and security of the person (Articles 9 and 10); the rights of persons belonging to minorities (Article 27); and dissemination of information relating to the Covenant (Article 2).

Themes and issues discussed

In his introductory remarks, the head of the delegation lauded Canada's contributions to the international human rights community and pointed out the close collaboration among federal government, provincial governments, and NGOs in the drafting of the State party's report. He identified the biggest and most important human rights challenge in Canada as fulfilling the full and equal enjoyment of all human rights by Aboriginal Canadians.

Ms. Wedgwood posed several questions on the **rights of Aboriginal Canadians**. For example, regarding the **legal representation** of Aboriginal tribes in negotiating self-government agreements with the Government, she inquired about any requirements to ensure that **Aboriginal women** participated in these negotiations and that the interests of women were represented. She also challenged the real motives of the Government in wanting to clarify land titles and noted that according to several NGOs, **poverty reduction measures** in the Aboriginal population had not been effective. In response, the delegation said that its agreements with Aboriginal tribes sought to ensure constitutional protection. Aboriginals had independence over the composition of their legal team, but noted that financial support was available to them. The delegation maintained that there was no fiduciary duty for the State party to ensure that Aboriginal women were represented in these negotiations, but the Government was nonetheless taking active steps in this regard. Ms. Wedgwood re-emphasised her concern regarding female participation, acknowledging the importance of the right to tribal autonomy, but nevertheless arguing that this right should not contribute to discrimination against women. In response to other questions, the delegation argued that the term "**self-determination**" was evolving to incorporate people who lived within a State and respected its territorial integrity and there did not yet exist solidified State practice on this issue. It stressed that the right to self-determination should not be interpreted as a right to dismantle or damage the territorial or political integrity of States that adhered to the principle of equal rights and self-determination.

Mr. O'Flaherty found that **Section 67 of the Canadian Human Rights Act** excluded the needs and aspirations of Aboriginal communities and urged that it be repealed, to which the delegation responded that the Government intended to repeal it. Mr. O'Flaherty also perceived a lack of urgency on behalf of the Government with respect to guaranteeing that Aboriginal women were treated fairly in the division of matrimonial property upon the break-up of a relationship. The delegation indicated that the State party had signed a number of political accords with Aboriginal organisations regarding this matter, and that legislation on this issue would have to be developed in a cooperative manner. While welcoming the delegation's admission of high levels of **violence against Aboriginal women**, Mr. O'Flaherty expressed disappointment at the absence of a marked improvement in this regard. Among other things, he mentioned the documentation of inappropriate police behaviour in cases of violence against Aboriginal women by Amnesty International in 2004.

Regarding issues generally affecting women, Ms. Elisabeth Palm mentioned that NGOs informed the Committee about **severe cuts in welfare** and cited specific examples from British Columbia. She noted that the Committee on the Elimination of Discrimination against Women (CEDAW) had recommended that British Columbia analyse these policies' **negative impact on women**. On immigration-related matters, Mr. Johnson Lopez noted that although Canada declared that it did not detain individuals for immigration reasons, he was aware of concerns regarding **undocumented immigrants and unaccompanied child asylum seekers** being placed in detention centres. The delegation stated that detention was a grave issue and that it was only used as an exceptional measure.

Mr. Kälin expressed concern that many issues addressed in Canada's previous session in 1999 were still on the agenda this time, including the country's position on **requests for interim measures** from the Committee. In response to the State party's argument that these requests were non-binding and would be followed on a case-by-case basis, Mr. Kälin contended that they were authoritative statements which the State party had an obligation to follow and urged the State party to reconsider its position. Mr. Roman Wieruszewski stated his desire for Canada's behaviour to be a model for other countries to follow and cautioned that totalitarian states might find support in Canada's current position on this issue.

Mr. Kälin also addressed Canada's **anti-terrorism efforts**, specifically the Anti-Terrorism Act's definition of terrorism, which makes it a precondition for a terrorist act to have a political, religious, or ideological purpose. He feared that this definition could lead to profiling and the targeting of certain ethnic communities, to which the delegation replied that the definition had been carefully drafted and that the motivational aspect of the definition recognised the uniqueness of terrorism. The delegation argued that the Government had reached out to communities for their input and stressed that the Act was currently being reviewed. Related to this issue, Mr. Kälin and Mr. Rajsoomer Lallah raised the matter of security certificates (which enabled the State party to detain and expel immigrants and refugees on the grounds of security concerns) and the policy of the State party to permit **deportation of persons, in exceptional circumstances**, to a country where they would face the risk of torture. Referring to the *Suresh v. Minister of Citizenship and Immigration* Supreme Court decision, Mr. Kälin expressed concern that this decision undermined the absolute prohibition of torture. The delegation answered that the issuance of security certificates was an exceptional measure and cited the names of the seven individuals who currently had security certificates issued against them, but was unable to provide information on their religious affiliation. Affirming that the Government supported the *Suresh* decision, the delegation noted that no individual had been removed on that basis and further divulged that three removal decisions had recently been set aside. Sir Nigel expressed concern at Canada's role in the removal of Mr. Arar from the USA to Syria, where torture was reported to be practised. He mentioned that NGOs had submitted information indicating that the Arar case was not an isolated one, and wondered therefore if this practice constituted a Government policy of sub-contracting torture, which the delegation denied.

Mr. Wieruszewski was dismayed about the absence of an adequate remedy to the violation of the principle of **non-discrimination**, despite having asked a similar question in the State party's previous appearance before the Committee. The query was particularly directed towards efforts in Québec and based on concerns from a Québec NGO. Also based on NGO information, Mr. Wieruszewski criticised the lack of transparency as well as the participation of civil society in the **implementation of the Covenant** in Canada. Mr. O'Flaherty voiced concern on the **dissemination of information related to the Covenant**. He relayed his experience of visiting the Canadian Heritage website, where the delegation indicated that the Committee's Concluding Observations were posted, and bemoaned the fact that he was able to find the Concluding Observations only after a complicated search.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

In its Concluding Observations, the Committee noted with concern that many of its previous recommendations remained unimplemented. Thus, it was not surprising that the current Concluding Observations echoed those of the 1999 Concluding Observations from the 4th periodic report. In 1999, the Committee expressed concern regarding: the implementation of the right to self-determination; Canada's position that compelling security interests may justify the expulsion of aliens to countries where they may face a real risk of being tortured; Canada's stance on interim measures requests from the Committee; discrimination against Aboriginal women; and women being disproportionately affected by poverty.

Canada appeared before the Committee against Torture (CAT) in May 2005, where both its 4th and 5th periodic reports were considered. Similar to the HRC, the CAT expressed concern about the *Suresh* decision, the Arar case, and Canada's position on interim measures requests. Canada also recently appeared before the Committee on the Rights of the Child (CRC) in 2003, where it presented its 2nd periodic report. This committee regretted that many of its previous recommendations had not been addressed, and similar to the HRC, expressed deep concern at the high mortality rate among the Aboriginal population. It also expressed concern relating to deepening poverty among women and the ensuing impact this phenomenon may have on children. The CRC articulated special concern at the absence of a national policy on unaccompanied child asylum seekers, and recommended that the State party refrain from detaining unaccompanied minors. It reiterated the observations and recommendations with respect to land and resource allocation made by the HRC and other treaty-monitoring bodies.

NGO concerns

At the Committee's NGO session on 17 October 2005, Canadian NGOs were very well-represented. In addition, there was an informal NGO briefing on Canada with three Committee members. Among the NGOs represented – most of whom also attended the country session – were: the African Canadian Legal Clinic, Amnesty

International, the Assembly of First Nations, the Canadian Association of Elizabeth Fry Societies, the Centre for Equality Rights in Accommodations/Advocacy Centre for Tenants, the Feminist Alliance for International Action, the National Anti-Racism Council of Canada, the Poverty and Human Rights Centre, and the Québec Human Rights League. Representatives of several indigenous nations were present as well. Numerous shadow reports were submitted to the Committee, totalling at least 13 reports.

NGO concerns included: secrecy in Canada's domestic approach to monitoring compliance with the Covenant; non-implementation of the Committee's previous recommendations; the high level of violence against Aboriginal women; the deportation of individuals to countries where they were at risk of torture; the high percentage of female prisoners; poverty among women; evictions carried out without a prior hearing; the right to self-determination of Aboriginal Canadians; the political repression of protesters in Montréal; racial profiling at airports; and the signing of safe third country agreements between the United States and Canada. The information provided with respect to violation of the rights of Aboriginal Canadians was particularly enriched by the testimony of a female Adams Lake Band Elder, who described the arrival of three corporations on her Band's reserve and the jailing and insults she endured for resisting development on her Band's land. The Committee addressed the majority of the NGOs' concerns.

Italy (5th periodic report³)

Overview of the country session

On 20 and 21 October 2005, the Committee considered Italy's 5th periodic report. The large, high-level delegation, headed by the Deputy Minister of Internal Affairs, was mainly comprised of senior officers of several governmental ministries including the: Ministry of Internal Affairs, Ministry of Justice, Ministry of Defence, Ministry of Equal Opportunities, Ministry of Foreign Affairs, and Presidency of the Council of Ministers. The Committee expressed satisfaction with the report, including its inclusion of useful and plentiful information and its focus on the previous Concluding Observations.

Key themes discussed during the meeting were: asylum-seekers and the situation on the island of Lampedusa (Articles 12, 13, and 26 of the Covenant); the Roma people (Articles 2, 12, 26, and 27); law enforcement violence by the police, in particular in Genoa and Naples (Articles 6, 7, and 21); racism and xenophobia (Articles 20 and 26); and the justice system (Article 14). Italy has made reservations to several articles of the Covenant, including Articles 9(5), 12(4), 14(3), 14(5), 15(1), and 19(3). However, the delegation announced that Italy was in the process of withdrawing some of its reservations, namely Articles 9(5), 12(4), and 14(5).

Themes and issues discussed

Referring to 9/11 in his opening statement, the head of the delegation raised the importance of cooperation between States, while fully respecting constitutional values and not restricting the rights and freedoms of citizens. He noted the growing importance of human rights in the domestic and international levels and pointed to the 1948 Italian Constitution which covers all human and social rights. He explained that the increasing influx of foreigners was of concern in Italy and that all attempts to counter illegal immigration were based on the principle of reducing suffering and human rights violations. The Italian Government launched a series of initiatives at the national and international level aimed at preventing, combating, and suppressing this phenomenon.

Mr. Amor requested the Italian delegation to comment on **racist or xenophobic conduct** by some Italians and referred to examples where such statements appeared to go unpunished. He inquired about steps by Italian judicial authorities to tackle this problem and about any obstacles to implement Article 20(2) of the Covenant. Mr. O'Flaherty brought up the dissemination of racist propaganda by certain politicians and asked about measures to address and to prosecute these acts. In reply, the delegation described that incitement to racial hatred was punishable by law and that Italian legislation was in conformity with the Durban Declaration and Programme of Action. However, it stressed the difficulty of distinguishing between material covered under the right to freedom of expression versus racist propaganda. Delegates explained that incitement to racial hatred and membership in organisations propagating racism and xenophobia were punishable by imprisonment. The "Mancino Act" provides that discriminatory or racist attitudes underlying the commission of a crime are considered aggravating

³ CCPR/C/ITA/2004/5.

circumstances. Furthermore, anti-discrimination legislation also applied if the victim was a foreigner. In the past five years, however, there were a small number of convictions for racist crimes, which showed that such acts were extremely rare. Moreover, the delegation said that there were no problems regarding the integration and the reception of Jewish and Muslim people in Italy. With regard to the implementation of Article 20(2) of the Covenant, the spokesperson said that the provision had been incorporated into several laws.

Several questions were posed by Mr. Kälin and Mr. Glèlè-Ahanhanzo on issues affecting **migrants, immigrants, and asylum seekers** including: the application of the Covenant to migrants on board vessels, which Italy was reported to have intercepted within or outside Italian territorial waters; the criteria and procedures utilised to distinguish between illegal immigrants and asylum-seekers prior to *refoulement*; criteria for expulsion, including consideration of the situation in countries of origin when deciding on expulsion; determination of asylum status during a specific incident of *refoulement* of Libyans carried out in a very short period of time; and information on alleged violations and clear evidence of police violence taking place. In general, the delegation denied all allegations that Italy prevented migrants from the right to apply for asylum and that migrants were harmed in any way. The delegation depicted the interception of boats carrying illegal immigrants heading for the island of Lampedusa by Italian coastguards as rescue operations to save people's lives. Delegates claimed that no vessels were sent back to their port of origin and all illegal immigrants were given the opportunity to apply for asylum with the help of interpreters and experienced immigration personnel. The spokesperson further attested that many migrants were transferred to holding centres in other provinces in order to lodge their asylum applications, but that a number of them escaped, assaulting and injuring Italian guards in the process. While Italy funded and administered the expulsion of those not granted asylum, it took into account national and international law. Concerning the flow of migrants on the island of Lampedusa, the delegation said that the Government was working in cooperation with and requested assistance from international bodies in the rescue operations and the repatriation of migrants. The spokesperson also described in detail the asylum procedure. Concerning the alleged violence against migrants, the delegation said that the officers who were found guilty would be severely punished.

Mr. Solari Yrigoyen, Mr. Glèlè-Ahanhanzo, and Mr. O'Flaherty expressed concerns about the **Roma** population in Italy who lived in camps leading to social exclusion. Information was requested on problems relating to access to housing, health care, and education as well as national polices to address the community's needs. It was noted that the delegation repeatedly referred to the Roma as "nomads", implying that their nomadic lifestyle was part and parcel of Roma culture; however, many led a sedentary life and thus the Committee asked the delegation to delete this term from the discussion. In response, the delegation said that the Italian Roma population enjoyed all Constitutional rights and were protected by the rights to health care, education, and equality. The Minister of Education executed several measures to encourage the schooling of Italian and foreign minors and the Government provided school buses with cultural mediators specifically for Roma children, as their parents never brought them to school. Italian teachers received training on Roma and foreign children and the Association of Nomads provided personnel focusing on the schooling of Roma children. There were regulations specifically focused on the Roma population, including an initiative for separate legislation spearheaded by the Ministry of Regional Affairs. Concerning the term nomads, the spokesperson emphasised that the term could be avoided, however, certain Roma associations also used this term while referring to the Roma people.

Sir Rodley and Mr. Glèlè-Ahanhanzo investigated the **violent behaviour of law enforcement officials** during demonstrations in Genoa and Naples and asked for an explanation for the dismissal of charges against law enforcement officials. Committee members requested the delegation to comment on the maltreatment of anti-war protesters by State agents, on alleged police brutality and abusive behaviour during the eviction of Roma families from unauthorised camps, and on the complaints lodged against members of the *Carabinieri* and prison officers. The Committee asked the delegation to indicate the number of complaints raised against the State police and prison officers and how many of these persons were prosecuted and convicted. The delegation replied that the media exaggerated incidents and that demonstrations usually take place without any problem. It noted that, with regard to the events that took place in Genoa and Naples, extremist groups deliberately provoked the police and provided figures on the number of police officers and prison officers who were summoned, dismissed, or prosecuted. On 13 July 2001, the police administration published a police manual on how to deal with demonstrations in order to prevent disturbance of the peace in a proportional way.

Mr. Glèlè-Ahanhanzo, Mr. Bhagwati, and Sir Rodley examined elements of the **justice system** in Italy involving: the incorporation of the right to a fair trial in the bill on reforming the justice system; the number of people relying

on legal aid; and information on access to a lawyer in detention centres. The delegation answered that access to a lawyer in detention centres was guaranteed from the moment of the arrest. Concerning legal aid, the law provided legal aid for incomes below 9,000 Euros per year which benefited 96,000 people in 2004. Moreover, foreigners from outside the European Union automatically could avail of legal aid when needed. The Government amended an article of the Criminal Procedure Code allowing for an appeal in cases where a person was not informed of the procedure concerning him. In such case, the burden of proof would not be on the individual, but on the judicial authorities. Furthermore, the "Pinto" law provided for the possibility of appeal in cases of undue delay and the compensation of victims by the State.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

In its current Concluding Observations, the Committee complimented the State party on its 5th periodic report, which was in conformity with the reporting guidelines, and on the attendance of a delegation composed of numerous experts. Similarities in the Committee's current concerns with its 1994 and 1998 observations can be found in issues constituting racial discrimination and intolerance as well as law enforcement violence by police and prison officers. In addition, in the 1998 Concluding Observations, the Committee was, similar to its current observations, concerned about the follow-up on complaints regarding police and prison officers' abuse, access to legal counsel, and undue delay. Different from the former observations, the 2005 Concluding Observations extensively focused on the issue of Roma people and the incidences on the island of Lampedusa regarding migrants.

The HRC shared certain concerns with other treaty-monitoring bodies. In its 2003 Concluding Observations on Italy, the CRC commented on the abuse by officers, the reform of the justice system, the Roma people, and trafficking. The Committee on Economic, Social and Cultural Rights (CESCR) examined Italy in 2004 and was also concerned about the lack of an independent human rights institution, incidences of racial discrimination and intolerance, and the lack of comprehensive legislation on asylum seekers. Additionally, the CESCR adopted observations on the treatment of and the living situation of Roma people and on the bill on judicial regulations.

NGO concerns

Although the Committee referred to a couple of reports during the session, there were no shadow reports available. Observing that there were only a few NGOs present at the meeting and that the Committee received relatively little information from Italian NGOs, Mr. O'Flaherty asked about the extent of cooperation by the Government with NGOs in Italy. He additionally commented that he had information from NGOs about xenophobic statements of politicians. Other Committee members relying on NGO information consisted of: Mr. Kálin in his question concerning the interception of vessels near the island of Lampedusa; Mr. Solari Yrigoyen acknowledging the Committee's receipt of numerous reports of poor hygienic conditions in camps; and Sir Rodley speaking of reports on the maltreatment of anti-war protesters by State agents and of reports on alleged police brutality and abusive behaviour during the eviction of Roma families from unauthorised camps, including one Roma organisation which provided comprehensive information on specific cases of abuse.

Paraguay (2nd periodic report⁴)

Overview of the country session

On 19 and 20 October 2005, the Committee considered the 2nd periodic report of Paraguay. The rather small delegation was composed of: the head of the delegation, Mr. Mario Sandoval, who was the Ambassador of the Permanent Mission of Paraguay to the UN as well as the Director General for Multilateral Affairs; and the Human Rights Director of the Ministry of Foreign Affairs. As the State party's list of written replies to the Committee's list of issues was only available in Spanish, the State delegation verbally reiterated all of their answers in summary. Due to the small delegation, many questions could not be answered and the delegation announced several times that it would provide written answers to the remaining questions by 25 October 2005. Moreover, the Committee was not satisfied with the State report as it was submitted late and failed to provide sufficient information on the implementation of the Covenant and the difficulties encountered.

⁴ CCPR/C/PRY/2004/2.

The main themes and issues discussed during the meeting included: the Paraguayan police and the military concerning the use of force, recruitment, violence, military and civil service, conscientious objection, and firearms (Articles 6, 7, and 8 of the Covenant); abortion (Article 6); equality between men and women (Article 3); detention (Articles 9 and 10); and the right to demonstrate (Article 21).

Themes and issues discussed

In his opening statement, the head of the delegation explained that Paraguay had a relatively young Constitution that was adopted in 1992 after the fall of a dictatorial regime and had drafted the entire legal framework from scratch. Human rights now formed part of the Constitution. Some of the State's achievements included: establishing an office of the Ombudsman in 1995 and appointing an Ombudsman in 2000; providing compensation for the victims of the dictatorial regime; ratifying most of the international instruments; creating a special Human Rights Unit; designating institutional mechanisms for the promotion and the protection of human rights from 1990 onwards; and creating new laws in order to implement the Covenant in several domains.

Mr. Solari Yrigoyen raised concerns about **forced recruitment into military service**, highlighting that the Committee received detailed information on recruitment of child soldiers as recently as March 2005, while the State party alleged that recruitment of minors had been eradicated. He solicited information on children who had died and subsequent sanctions, on the number of cases taken to court, and on the number of children who received authorisation by a judge or magistrate to join the army. Regarding conscientious objection, he described NGOs' allegations that in rural areas, Chaco people had little knowledge of their rights, such as being able to claim conscientious objection. The delegation answered that it did not have any data on children being recruited into the army and that the Government was not aware of any complaints concerning soldiers under 18 years of age. It directed the NGOs in question to submit their information on this subject to the Government. On conscientious objection, the State party expressed its inclination to uphold this principle without the passage of a law, but rather through reference to the Constitution. The delegation informed the Committee that the Chamber of Deputies was in charge of applications to lodge conscientious objections and claimed that the procedure worked very well. The spokesman assured the Committee that unanswered questions would be addressed in written form.

Concerning the **excessive use of force and firearms**, Sir Rodley said that prevention of these problems existed at the institutional, and not at the normative level. At least 90% of police officers acquired their own firearms, for which no standard specifications existed and many of which were inappropriate for police work. Furthermore, there was no mechanism to verify the extent to which officers complied with the rules of necessity and proportionality. Considering that 14.5% of police officers killed on duty had inadvertently shot themselves or been accidentally shot by a colleague made clear that some civilian deaths could be the result of poor handling of unsuitable firearms. Sir Rodley asked about any concrete preventive steps implemented and any specific action taken against law enforcement personnel for excessive use of force. He also solicited comments from the delegation on extrajudicial killings by the police and the acquiescent attitude of law enforcement personnel to killings during demonstrations by farmers and in prisons. Mr. Rivas Posada observed that legal provisions regarding the **right to demonstrate** were too restrictive, specifically the restrictions on the duration, on the location, and on the almost discretionary mandate of the police to forbid a demonstration. He stated that the fundamental point of Article 21 of the Covenant was the peaceful character of a demonstration and found that this article was not implemented correctly. The delegation responded that, with regard to the prevention of the excessive use of police force, police training aimed to inculcate the need for proportionality. Moreover, it announced that there were not any official complaints or unofficial allegations through the media or NGOs. Concerning firearms, it confirmed that police officers did have to purchase their own weapons, and said that the same was often true for persons undergoing military training. However, funding was allocated for the purchase of firearms for the police in the 2006 budget, but it would be insufficient to provide the full number of needed firearms. The delegates promised to furnish statistics on police officers killed by colleagues, on arbitrary or extrajudicial killings, and on other related information in writing. Concerning demonstrations, the delegation noted restrictions had been set in order to prevent infiltration by persons seeking to disrupt peaceful demonstrations, as had occurred in the past. Nonetheless, it agreed that the current law was based on an outdated situation and needed to be changed.

Sir Rodley brought up the problem of **overpopulation in prisons**, revealing that he possessed figures showing that 75% of the prison population was in pre-trial detention. He questioned the delegation on the number of those people who were convicted and what the average duration of the imprisonment was. While acknowledging

important changes in the Code of Criminal Procedure, Mr. Johnson Lopez observed that precautionary detention was still common and inquired if the Government intended to shorten the standard period of pre-trial detention to conform it with Article 9 of the Covenant. Moreover, he relayed that the Committee was informed that all detainees – adults, adolescents, children, pre-trial detainees, and convicted criminals – were held together in prisons in the provinces, and that food and medical care were lacking. He also asked when the new Esperanza prison would come into service and whether the Government had set aside funds to construct new penitentiary facilities and to cover the needs of detainees. In response, the delegation admitted that only 25% of the prison population had been sentenced and promised that the remaining questions of Sir Rodley would be answered in written form. It further answered that facilities for the separation of convicted prisoners from remand prisoners were recently set up and there were no plans to shorten the period of provisional detention of extraditable persons. The delegation stated that detention conditions in prisons had improved due to the body mandated to monitor juvenile detention centres and the human rights division of the Public Prosecutor's Office which carried out regular visits to detention centres and made recommendations to prison authorities. One of the main achievements was the separation of minors from adult inmates. In addition, separation of accused persons from convicted prisoners was underway in Tacumbu prison in Asunción. However, the problem of overcrowding persisted and the Government was formulating short and medium-term strategies to refurbish and expand existing facilities and build new prisons. Considerable improvements were made in terms of infrastructure and sanitation, although budgetary constraints hampered progress. The non-profit association TRASOL, operating in Casa del Buen Pastor women's prison, provided technical and financial assistance and vocational training for prisoners. In order to ensure further improvements to places of detention, there would be an increase in budget allocations for prison maintenance, rehabilitation, and the treatment of juvenile offenders.

Committee members Mr. Tawfik Khalil and Mr. Prafullachandra Natwarlal Bhagwati questioned the delegation about issues of **gender equality** including: affirmative action in domestic legislation to increase the participation of women in public life; the current electoral quota for women; serious problems of discrimination against women in employment despite positive amendments to the Labour Code and measures to ensure effective enforcement of legislation; discriminatory provisions in legislation on domestic work such as a figure of 40% of the minimum wage being set as remuneration for female domestic workers; implementation and effective monitoring of legislation by the Government; and coverage of private teaching and domestic work within security benefits, pursuant to a reprimand by the Inter-American Commission for Human Rights. The delegation replied that the practical application of guarantees of gender equality was a gradual process. In contrast to rural regions, efforts in urban areas had led to a change of attitude towards gender equality. The Executive Secretariat for Women was an effective lobbyist for women's issues and had a reasonable budget at its disposal. This body submitted a bill to change the social security system for women, which would provide for equal remuneration in domestic service. Inequalities in remuneration between male and female domestic workers continued to exist and a bill to amend relevant legislation and thereby rectify the situation was currently before Parliament. Additionally, the Executive Secretariat for Women was conducting awareness-raising activities to promote gender equality. The Government had stepped up efforts to increase the representation of women in Parliament and the Executive Secretariat for Women has tabled a bill proposing to raise the quota for women in Parliament to 50%. Although the existing 20% quota was not being achieved in Parliament, women's representation was higher in other branches of Government.

Mr. Tawfik Khalil also posed questions on **abortion** such as whether restrictive legislation would be amended to enable women to avoid the hazards of clandestine abortion, which often resulted in death. He requested further information on whether the increased distribution of contraceptive devices, mentioned by the delegation, was being carried out in rural as well as urban areas. Mr. Abdelfattah Amor inquired about the justification for abortion being illegal, given the separation of the Paraguayan State and the Catholic Church. A delegate replied that although the rate of abortion was high and clandestine abortions resulted in many deaths, he was not aware of any move to decriminalise abortion. A family planning program that distributed contraceptives in rural areas, where the problem of clandestine abortions was most acute, had proved a great success. The delegation further added that the 1992 Constitution stipulates the strict separation of Church and State, and the statutory prohibition of abortion had no religious motivation. While the right to life was enshrined in the Constitution, the issue of illegal abortion had not been taken into consideration.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

In its current Concluding Observations, the Committee lamented that the State party submitted its report six years late and that the report lacked sufficient information on the implementation of the Covenant. This latter

observation was similarly made in the 1995 Concluding Observations on the initial report. Additional shared points in the Committee's concerns can be located in issues of: abortion; pre-trial detention; prison circumstances; the excessive use of force; and gender inequality. The language in the current Concluding Observations is stronger than in the previous ones. While there were not any questions from the Committee on the withholding of information, the Committee did express regret over a lack of information in some cases.

NGO concerns

There was one shadow report available on Paraguay. La Coordinadora de Derechos Humanos del Paraguay (CODEHUPY) wrote and submitted a comprehensive report in cooperation with the OMCT called the "Informe Alternativo de la Coordinadora de Derechos Humanos del Paraguay al segundo informe periódico del Estado de Paraguay presentado en virtud del Art. 40 del Pacto Internacional de Derechos Civiles y Políticos". The report covered a wide range of issues where Paraguay failed to comply with the Covenant as well as included a summary of several positive developments.

In his questioning on the excessive use of force, Sir Rodley referred to a national police report which was developed through the assistance of the United Nations Development Programme (UNDP). He additionally used information from a Paraguayan NGO, the Paraguay Human Rights Coordinating Office. Mr. Solari Yrigoyen also relied on information from other sources in his questions on the recruitment of child soldiers and the freedom of expression. Ms. Palm referred to NGO information in her queries on the independency and impartiality of the judiciary. For his question on female equality, Mr. Tawfik Khalil availed of information from the Inter-American Commission for Human Rights. Overall, the Committee addressed most NGO concerns.

Other activities

Briefing by NGOs and specialised agencies

Overview

On 17 October 2005, on the first day of the Session, the Committee organised a briefing for NGOs and specialised agencies. About 20 NGOs were present. Since there were no NGOs present from Italy and Brazil and only one NGO from Paraguay attended the briefing, almost all of the Canadian NGOs had time to make their statement. However, there was much overlap in the statements made, specifically regarding the rights of indigenous people. Two persons spoke on behalf of the NGOs for the USA and the International Association of Democratic Lawyers, respectively, relating to the country report task forces meeting on the USA. NGOs which could not make their statements during this meeting, due to time constraints, were referred to the NGO lunch briefings with the Committee.

Themes and issues discussed

Canada:

Amnesty International Canada expressed concern about Canada's domestic approach towards international instruments, violence against women, law regarding torture that takes place in other countries, detainment and deportations, immunity laws, and the death penalty. The Charter Committee on poverty issues made a statement concerning the rights of the poor, detention in civil and criminal cases, adequate housing, and the jurisprudence of the Supreme Court with regard to health care. The spokesperson for the Canadian Feminine Alliance for International Action and the Poverty and Human Rights Centre British Columbia addressed the position of women in Canada, particularly Aboriginal women, immigrants, single mothers, and black people. The Advocacy Centre for Tenants Ontario and Centre for Equality Rights in Accommodation raised the issue of fair and public hearing in trials, the failure of the Canadian Government with regard to the existence of discrimination in the legislation, homelessness, and the right to be heard. An indigenous people representative pleaded for the right to self-determination. A representative of the Organisation for Indigenous and Civil Nations said that Canada did not recognise all of the rights of indigenous people. A representative of the Inuit people said that legislative measures should be taken in regard to the Inuit people. The Quebec human rights league stressed Canada's anti-terrorism law. The National Anti-Racism Council Canada discussed Canada's non-compliance with the non-discrimination principle. Alberta's Lubicon People representative said that there were no negotiations taking

place between Canada and the Lubicon people. The spokesperson of the Native Women's Association of Canada and the Assembly of First Nations spoke of the discrimination against indigenous women, black women, and women prisoners. The spokesperson of the African Canadian Legal Clinic explained that the rights of African Canadians were violated.

Paraguay:

The Coordinadora de Derechos Humanos del Paraguay noted that Paraguay made some improvements. However, there were still problems with respect to penitentiary institutions, the rights of women, the appointment of judges, equality between men and women, child labour, sexual exploitation, and poverty among indigenous people and injustice with regard to possession of their own land.

USA:

NGOs elaborated on the issues of the war against terrorism and of torture as excuses for combating terrorism, citing the example of the Abu Ghraib prison. The International Association of Democratic Lawyers accused the American Government of hiding information from their citizens and also spoke of the USA's violation of international treaties.

Revised General Comment on Article 14⁵

On 25 October 2005, the Committee deliberated on the revised General Comment on Article 14 of the Covenant involving the right to a fair trial and equality before courts and tribunals. During this meeting, the first reading of the revised General Comment, Draft General Comment No. 32, continued and the Committee considered paragraphs 9, 10, and 11 of the Draft. Some of the issues discussed with respect to paragraph 9 involved: reference of jury trials to only the Anglo-Saxon systems, since many countries did not have any jury trials; explicit discussion of procedural rights; and the "unless" clause justifying the use of other parties. Ms. Palm concluded paragraph 9 by saying that the text would be kept as it was and some words would be inserted to "all parties" and the last sentence on jury trials would be moved to a footnote. Regarding paragraph 10, issues debated involved the phrase "punish offences", the hybrid courts, the burden of proof, and the length of the paragraph. On paragraph 11, Mr. Kälin found that the words "not part of the executive but from a judicial branch" could pose a problem. Sir Rodley proposed alternative language that several Committee members agreed with. Other edits were suggested by Mr. Shearer on replacing the part on "immunity" with a more general and broader formulation. Ms. Palm concluded that immunity generally drafted was a good solution. The term "judicial branch" would be deleted. There would be a reference to "tribunal" instead of to "court". Ms. Palm closed the meeting. The consideration of the draft of the revised General Comment on Article 14 would continue in the next session.

Follow-up on Concluding Observations

On 2 November 2005, the presentation of the report on the follow-up to the Committee's Concluding Observations took place by Mr. Rivas Posada, the Special Rapporteur on this issue. The 20-minute meeting elicited only a few comments, which were of a technical nature. The report set forth the follow-up information on final Concluding Observations sought, received, and acted upon, as well as steps taken by the Special Rapporteur pursuant to the Committee's amended rules of procedure. The report referred to countries where the Committee had not closed its follow-up activities.

Mr. Rivas Posada said that the report focused on activities undertaken during this session, and the proposals that required a decision by the Committee. Consultations were held with the following State parties: Colombia, El Salvador, Mali, Israel, Sri Lanka, and Venezuela. Mr. Rivas Posada said he received partial responses from Venezuela. The Venezuelan Mission could not provide information on when they will submit their future responses. Therefore, a note would be transmitted saying that Venezuela received particular attention. Concerning Moldova, he suggested scheduling a further meeting with the delegation during the next session, as the delegation had not made any specific comments. Togo did not respond to the invitation to meet for a consultation. A new attempt had to wait until the next session. However, consultations with a delegation from Mali were held. The delegation said that an inter-ministerial commission was established to prepare follow-up replies, which would be submitted as soon as possible. With regard to El Salvador, Mr. Rivas Posada said that

⁵ CCPR/C/83/CRP.4/Rev.1.

he had contact with the delegation and representatives promised to send answers soon. Israel received two reminders on the submission of answers and responded that it was doing everything possible to provide them. Concerning the Philippines, a response answering all of the questions was received. Thus, Mr. Rivas Posada proposed not to take any action. The response of Sri Lanka was still being translated and the decision to these answers would be made at the next session. The same situation applied to Colombia and Serbia and Montenegro. Regarding Suriname and Uganda, no response was received, even though Suriname was given two reminders. Mr. Rivas Posada asked the Secretariat to send a note again, arranging an appointment for consultation at the next session. Belgium and Namibia were reminded that no communications were yet received. No steps had been taken regarding Liechtenstein. The response of Albania was just received. Lastly, with regard to Benin and Poland, the deadline had not yet expired, so a decision concerning these countries would be taken at the next session.

Follow-up on views

On 3 November 2005, the presentation of the report on the follow-up to the Committee's views took place with Mr. Ando as the Special Rapporteur. The report presented follow-up information on the Committee's views regarding its previous communications with the State parties of Australia, Canada, Colombia, Libya, Spain, the Czech Republic, and Sri Lanka. Mr. Ando said that a representative from the UN mission of Sri Lanka and the Ambassador from the UN mission of the Czech Republic came to see him.

Regarding Australia, there was a case of a couple living illegally in Australia whose expulsion would cause a violation of the *non-refoulement* principle. The State party reported that it would do something about the situation, but so far no action was taken. Mr. Ando suggested asking the State party for an update. On Canada, the case involved an extradition to the United States without guarantee that the death penalty would not be applied. The State party responded to the Committee's views by saying that they would stay with their position on the extradition of the person concerned. Mr. Ando suggested that another letter be sent to the State party. In Colombia, the author of the case was outside the country of Columbia and would like to return, but there was no guarantee for his security. Mr. Ando said that he met a representative of the State party, but nothing happened yet to change the situation. The author asked the Committee to intervene. Mr. Ando suggested sending a letter to the State party and asking for an update.

Regarding Libya, a Libyan residing in Morocco wanted to go to France for her studies, but the Libyan Consulate in Morocco was refusing to hand over her passport. A representative of the State party came to see Mr. Ando and guaranteed that he would send the information to the Home Ministry and the Consulate in Morocco. Since then, the situation had not changed and therefore Mr. Ando suggested sending a letter for an update. With respect to Spain, there were three cases. The first one was about a prolonged delay in a judicial proceeding. The Committee asked the State party to provide compensation. The author received 600 Euros, which was, according to Mr. Ando, a nominal and insufficient payment. Mr. Ando mentioned that the Committee could ask the State party for an update and could send the author's information for comment. The second case was also a case where the State party had to provide compensation to the author. However, the State party did not implement the Committee's recommendation. Mr. Ando suggested writing a letter again to the State party. The third case concerned the so-called "Hill-brothers" case. In 1997, the Committee stated that there was a violation and asked for compensation to the author. The State party sent information that the case was still pending. The author told the Committee that an international arrest warrant was issued by the Court of Valencia based on the case decided eight years ago. Mr. Ando suggested sending a letter.

With respect to the Czech Republic, there was a case concerning the payment of compensation. The Ambassador came to see Mr. Ando and said that the Czech Mission requested the Governmental Commission to provide the HRC with written information. The mission did not receive it yet and Mr. Ando asked the Mission to forward the replies as soon as they received it. On Sri Lanka, a representative of the Sri Lanka Mission came to have a meeting with Mr. Ando. There were five cases in which there were problems regarding the payment of compensation. In two out of the five cases, the representative stated that the compensation may not be payable. The Government asked the Human Rights Committee of Sri Lanka how much compensation was necessary. However, there was no outcome yet.

Several Committee members voiced comments. For example, Mr. Solari Yrigoyen stated that the Canadian extradition case was very important because it was about the death penalty and that the Committee needed to be very firm in their communications to Canada because of the seriousness of the case. Concerning Spain, he

noted that Spain was not complying with any adopted resolutions or recommendations from the Committee. Ms. Chanet said that the session's press conference could be used to mention the Canadian case. Mr. Shearer verbalised outrage over the Libyan case and proposed asking the Libyan mission in Geneva to issue the passport and then facilitate it to Casablanca. According to Mr. Tawfik Khalil, this case could also be mentioned in the press conference. Mr. Wieruszewski said that he did not have much to comment on the report. However, he would like the Committee to focus more on cases concerning the former Soviet countries in Asia, because for these countries the HRC was the only body for communications. Mr. Bhagwati said, referring to the Sri Lankan cases, that the State party seemed not to be carrying out the Committee's recommendations and that the Sri Lankan judiciary was very recalcitrant.