

rant any finding of a separation violation of article 25 at the present stage, where no particular element requiring additional consideration under that article seems to be present.

...  
The Committee, accordingly, is of the view that the State party should adjust the provisions of the Immigration (Amendment) Act, 1977 and of the Deportation (Amendment) Act, 1977 in order to implement its obligations under the Covenant, and should provide immediate remedies for the victims of the violations found above.

Although they have no "binding" legal effect the Committee's views in this instance did lead to a resolution of the violation:

**Response dated 15 June 1983, of the Government of Mauritius to the views adopted by the Human Rights Committee on 9 April 1981\***

The Ministry of External Affairs, Tourism and Emigration... has the honour to refer to the views expressed by the Human Rights Committee under article 5(4) of the Optional Protocol to the Covenant on Civil and Political Rights with regard to Communication R. 9/35.

It will be recalled that, in the light of the facts found by the Human Rights Committee as a result of Communication R. 9/35, the Committee held the view that the Immigration (Amendment) Act of 1977 and the Deportation (Amendment) Act of 1977 were discriminatory in their effects against those three of the nineteen co-authors of the communication who were married to foreign nationals and that the provisions of the two Acts consequently resulted in violations of articles 2(1), 3 and 26 of the Covenant in relation to its articles 17(1) and 23(1).

It will also be recalled that the Committee expressed the view that Mauritius, as a State party to the Covenant, should adjust the provisions of those laws so as to remedy the situation.

The Ministry of External Affairs, Tourism and Emigration has the honour to request the Secretary-General to inform the Human Rights Committee that the two impugned Acts have now been amended by the Immigration (Amendment) Act of 1983 (Act. No. 5 of 1983) and the Deportation (Amendment) Act of 1983 (Act. No. 6 of 1983) which were passed by Parliament on Women's Day, 8 March 1983, so as to remove the discriminatory effects of those laws on grounds of sex.

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\*HUMAN RIGHTS COMMITTEE, ANNUAL REPORT, 38 U.N. GAOR, Supp. (No. 40) 254, U.N. Doc. A/38/40 (1983)

## Other Decisions of the Human Rights Committee

1. Another important early decision of the Human Rights Committee is the "Lovelace Case" (communication no. R.6/24), in which it was alleged that loss of Indian status and the right to live on a reservation through marriage (in Canada) violated various provisions of the Covenant. The Committee agreed that the facts disclosed a breach of article 27 of the Covenant, which guarantees the right of ethnic minorities to enjoy their own culture "in community with the other members of their group." 36 UNGAOR, Supp. (No. 490) 111, UN Doc. A/36/40 (1981).

2. As of May 1985, ~~thirty five of the 80~~ nations that had acceded to or ratified the Civil and Political Rights Covenant had accepted the competence of the Human Rights Committee to deal with individual complaints under the Optional Protocol, and the Committee's docket has begun to grow rapidly. Many cases brought to the Committee were found to be "inadmissible" for one reason or another.

One example is Communication No. R.22/89 brought by Paavo Muhonen against Finland. Mr. Muhonen had sought a "conscientious objector" status in 1977 to avoid the requirement of serving in the Finnish armed services. This request was denied, and he subsequently was sentenced to jail for 11 months. In 1981, after he had served ten of these months, his request for a pardon was granted--on the ground that his ethical conviction was sufficient to justify the conscientious objector status. He then filed a communication with the Human Rights Committee arguing that his rights under Article 18(1) of the Civil and Political Rights Covenant were violated and that he was entitled to compensation under Article 14(6). The Committee ruled that his claim under Article 18(1) was inadmissible because he had been pardoned, and that he was not entitled to compensation under Article 14(6) because he had not demonstrated that the 1977 decision rejecting his claim constituted a "miscarriage of justice." The Committee noted in this regard that he had chosen not to appear personally at the 1977 hearing and that the 1981 decision to grant a pardon was based in part on a personal appearance before the Medical Service Examining Board. CCPR/C/24/D/R.22/89 (April 9, 1985).

Among the 1985 communications found admissible are the following:

A. Hiber Conteris had been a pastor and a professor at the National University of Uruguay's School of Law and Social Services. He was associated with the Movement for National Liberation (Tupamaros) in the late 1960s but (according to his allegations) disassociated himself from that group in the early 1970s when they became more violent. In 1976 he was arrested without a warrant and held incommunicado for three months. He was subjected to "extreme ill-treatment" during this period, lost

20 kilos of weight and was forced to sign a confession. For two years he was not informed of the charges against him, and then he was tried before a military tribunal in a nonpublic trial without any opportunity to consult with the court appointed attorney. He was sentenced to 15 years detention and 5-8 years of precautionary detention for criminal conspiracy, conspiracy to undermine the Constitution, and related charges apparently connected to the assassination in the mid-1970s of Dan Mitrone, a U.S. citizen, by the Tupamaros. Mr. Conteris was released on March 10, 1985, pursuant to the amnesty introduced by the newly elected democratic government. Uruguay provided only general responses to the allegations made in this case, and the Committee made a significant ruling on how it should evaluate the evidence in such a case:

In cases where the author has submitted to the Committee allegations supported by witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

Based on the information it had, the Committee concluded that the alleged breaches of Article 12, 15, 18, and 19 of the Civil and Political Rights Covenant were not substantiated, but that the facts did disclose violations of Articles 7; 9(1), (2), (3), and (4); 10(1); and 14(1), (3) (b), (3) (c), (3) (d), and (3) (g). Communication No. 139/1983; CCPR/C/25/D/139/1983 (July 23, 1985).

B. Fifteen prominent persons in Paramaribo, Suriname, were arrested and summarily executed in December 1982, apparently because the government feared that they were in the process of attempting or about to attempt a coup d'etat. This group included four lawyers (including the Dean of the Bar Association), four journalists, two professors, two businessmen, two army officers, and one trade union leader. After communications were filed with the Human Rights Committee regarding this incident, Suriname responded in general terms that domestic remedies had not been exhausted, that other international organizations were investigating this matter, and that the incident had occurred because of an attempt to overthrow the legal authority. The Committee concluded that domestic remedies need not be exhausted because the highest authorities in the nation had been involved in these deaths and hence domestic remedies would not be "effective." Although other human rights organizations were investigating the incident (see Article 5(2) (a) of the Optional Protocol), the Committee found no comparable intergovernmental organization treating this as a case under active consideration (Suriname has not ratified the American Convention on Human Rights). Because Suriname did not

respond to the factual allegations, the Committee treated the allegations as substantiated and found a violation of Article 6(1) of the Civil and Political Rights Covenant and a duty to compensate the surviving families. Communications Nos. 146/1983 and 148-54/1983; CCPR/C/24/D/146/148-154/1983 (April 4, 1985).

C. Monja Joana, now in his late 70s, was a candidate for president in Madagascar in 1982 and was subsequently arrested without charges and held for eight months, when he was released and elected to the National People's Assembly. Prior to his arrest, he had charged that the presidential elections were fraudulent and called for new elections. Again, the government failed to respond to the charges brought to the Human Rights Committee in detail, and the Committee therefore gave "due weight" to the allegations, because under Article 4(2) of the Optional Protocol "the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it" and "to furnish the Committee the information available to it." On the basis of the information it had, the Committee concluded that the facts disclosed violations of Articles 9(1) and (2) and 19(2), but that not enough information was available to sustain a violation of Article 18(1). The Committee concluded that Monja Joana should receive compensation under Article 9(5) of the Covenant because of his arbitrary arrest and detention. Communication No. R.28/132; CCPR/C/24/D/R.28/132) (April 2, 1985).

D. John Wight was a South African pilot who made an emergency landing in Madagascar in 1977, and was subsequently arrested and sentenced to five years' imprisonment for overflying the country without authority and thereby endangering the external security of Madagascar. In 1978 he tried to escape but was recaptured. After his recapture, he was chained to a bed spring on the floor with minimal clothing and severe rationing of food for 3 1/2 months, was held incommunicado for another 6 1/2 months, and was sentenced to an additional two years in prison. During other periods, he was held in a 2 m by 1 1/2 m cell in inhuman conditions or in a 3 m by 3 m cell with one other prisoner. In 1984, he was released. The Committee found that Articles 7, 10(1), and 14(3)(b) of the Civil and Political Rights Covenant were violated and that "the State party is under an obligation to take effective measures to remedy the violations." Communication No. R.25/115; CCPR/C/24/D/R.25/115 (April 2, 1985).